

## **Falcon Heights City Council Workshop**

**City Hall  
2077 W Larpenteur Ave.  
6:30 p.m.**

### **AGENDA**

**Wednesday, February 7, 2018**

- 1) Ramsey County Sheriff's Office Administrative Fines**
- 2) Vacant Properties**
- 3) Right of Way Ordinance - Small Wireless Facilities**
- 4) Proclamation by Resolution – Not For Sale Day, 2018**
- 5) Tobacco Sales – Proposed for 21 Years and Older**
- 6) Bush Foundation Grant**

If you have a disability and need accommodation in order to attend this meeting, please notify City Hall 48 hours in advance between the hours of 8:00 a.m. and 4:30 p.m. at 651-792-7600. We will be happy to help.

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## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item #1
<b>Attachment</b>	LMC Toolkit and State of Position
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Ramsey County Sheriff's Office Administrative Citations
<b>Description</b>	<p>Before 2009, both the Office of the State Auditor and the Minnesota Attorney General's Office had taken the position the local governments did not have the authority to issue fines for traffic offenses. In 2009, the Legislature clarified and enacted MN Statutes, section 166.999. This Statute provides authority for local governments to implement an administrative citation program.</p> <p>The City must pass a resolution that:</p> <ul style="list-style-type: none"> <li>· Authorize police use of administrative traffic citations for \$60 per violation.</li> <li>· Obligates the city to provide a neutral third party to hear and rule on challenges.</li> <li>· Bars peace officers from issuing administrative traffic citations in violation of this law.</li> </ul> <p><b><u>Issuing Citations</u></b></p> <p>Peace Officers may issue an administrative traffic citation to a vehicle operator who:</p> <ul style="list-style-type: none"> <li>· Violates speed limits by less than 10 miles per hour.</li> <li>· Fails to obey a stop line.</li> <li>· Operates a vehicle with a cracked windshield or other specific equipment violation.</li> <li>·</li> </ul> <p>Note: However, cities are not required to issue administrative citations under the law. The process is entirely optional. Cities that believe that administrative citations make sense for them may adopt a resolution to issue such citations. In addition, where administrative citations have been adopted, the city cannot require, by ordinance or otherwise, that peace officers issue administrative citations. Under the law, peace officers always have the discretion to issue an administrative citation, give a warning, or issue a state criminal ticket.</p> <p>Due to state and federal law, people who have a commercial driver's license or who are driving a commercial vehicle at the time of the citation may not be issued an</p>

	<p>administrative citation.</p> <p><b><u>Allocation of Fines</u></b>  Again, the law requires that a city impose a fine of \$60 per citation. When a city peace officer issues the administrative citation, the fine must be shared with the state in the following manner:</p> <ul style="list-style-type: none"> <li>· Two-thirds of the fine (\$40) remains with the city that issued the administrative citation.</li> <li>· One-third of the fine (\$20) must be paid to the state commissioner of Finance for deposit into the state’s general fund.</li> <li>· One-half of the city’s share of the fine (\$20) must be used for law enforcement purposes. The law specifically requires that the funds “be used to supplement but not supplant any existing law enforcement funding.”</li> </ul> <p>If a citation recipient does not pay the fine, the city may choose to dismiss the administrative citation and issue a state criminal traffic citation instead. In the alternative, the city may use traditional debt collection methods. There is, however, no authority in the law for cities to specially assess the fine against real property for payment as taxes.</p> <p>Cities must track both the number of citations issued and separately account for any fine revenues in all city financial reports, summaries, and audits.</p> <p><b><u>Non- Traffic Offenses</u></b>  The law does not preclude the use of administrative citations for non-traffic offenses. Cities may still issue administrative citations pursuant to local ordinance for non-traffic matters such as liquor licensing ordinance violations, nuisance and animal ordinance violations, etc. However, the law specifically lists out the traffic offenses under Minn. Stat., ch. 169 for which an administrative citation maybe issued as discussed above, and specifically prohibits the issuance of administrative citations for other violations of Minn. Stat., ch. 169.</p>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>· League of MN Administrative Traffic Citations Toolkit</li> </ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed.



## INFORMATION MEMO

# Administrative Traffic Citations Toolkit

Learn about the law authorizing exclusive use of administrative traffic citations for minor traffic offenses. Find the steps a city must take to issue these citations. *Red toolkit icons* mark links to model resolutions, brochures, notice letters, and other required forms to make use of this law.



This toolbox icon marks the link to a downloadable tool.

### RELEVANT LINKS:

[Minn. Stat. § 169.999. Special Review of Administrative Traffic Citations and Local Traffic Diversion Programs](#), Legal/Special Investigation Division Office of the State Auditor, Nov. 13, 2013.

Take action with Information Memo toolkits. They contain the forms, samples, or models a city can use to take action on a process or project. Look for the toolkit icon so you can download that tool to use or modify it for your city.

## I. Legal authority

Since 2009 cities have been empowered to issue administrative citations for certain traffic offenses. Note that this toolkit does not implement or recommend a driver diversion program, where drivers pay a fee, complete a class, and then the traffic offense does not appear on the violator's driving record. The state auditor finds no statutory authority for diversion programs.

This toolkit helps cities institute a process for issuing administrative traffic citations. It contains a number of provisions a city may want to adopt. A city wishing to adopt any part of this toolkit should review the materials with the city attorney to determine which provisions and what language are best suited to the city's circumstances. Because provisions within this toolkit implicate state statutes and involve state and federal constitutional rights, the city attorney should review any modifications to ensure they conform to current law.

This is an exclusive remedy for administrative traffic citations. That is, no statutory or home rule charter city may use a different process for issuing such administrative traffic citations. A city may, however, issue other kinds of administrative citations pursuant to local ordinance for non-traffic matters such as liquor licensing ordinance violations, nuisance and animal ordinance violations, and so on.

## II. Implementing administrative traffic citations

The statute requires a city to take several steps to allow it to use the authority granted by law.

## RELEVANT LINKS:



*Authorizing Administrative Traffic Citations, LMC model resolution.*

[Minn. Stat. § 169.999, subd. 4.](#)

[Minn. Stat. § 169.999, subd. 1\(e\).](#)  
Send notice to:  
[DPS.Commissioners@state.mn.us](mailto:DPS.Commissioners@state.mn.us) or  
Commissioner, MN Dept. of Public Safety  
445 Minnesota Street  
St. Paul MN 55101-5155



*Commissioner of Public Safety Notification, LMC model letter.*

### A. Resolution

The city must pass a resolution that:

- Authorizes police use of administrative traffic citations for \$60 per violation.
- Obligates the city to provide a neutral third party to hear and rule on challenges.
- Bars peace officers from issuing administrative traffic citations in violation of this law.

### B. Appeal process

The city must set up an appeal process using a neutral third-party hearing officer for those who wish to contest their administrative traffic citation. The legislative intent is that this hearing officer be someone other than city staff or the city council.

The law requires that the city inform the recipient of an administrative citation of his or her right to challenge the citation, provide a “civil process” for challenges, and provide a “neutral third party to hear and rule on challenges” to a citation. The law does not provide a definition for a “neutral third party” or provide extensive guidance for cities. However, a common understanding of “neutral” would require that the hearing officer be impartial to both the interests of the city and the recipient of the citation. In addition, a common understanding of “third party” would require that the hearing officer not be one of the principal participants in the controversy (the city or the citation recipient). As a result, the hearing officer should most likely not be the city council as a whole, an individual councilmember, or a higher-level city officer such as the city administrator or clerk. The neutral third party should be someone hired by the city to specifically handle challenges to citations. The city may set up a schedule for these hearings, such as one day per month, and the city may charge a fee for these appeals.

### C. Notify commissioner

The city must notify the commissioner of Public Safety that the council passed a resolution allowing peace officers to issue administrative traffic citations. You may send the notice by mail or by email. Be sure to keep a copy.

## RELEVANT LINKS:

Minn. Stat. § 169.999, subd. 4(a).



[Administrative Traffic Citation Recipients Brochure, LMC model.](#)



Department of Public Safety sample, [Uniform Traffic Citation Form.](#)

Minn. Stat. § 6.74. Handbook, [Financial Reports, Accounting, and Auditing.](#) See also, Office of the State Auditor: [Administrative Traffic Citation Fines Collected by Local Governments pursuant to Minn. Stat. § 169.999](#) By year (by type of local government), Appendix 4.

Minn. Stat. § 169.999, subd. 1(b).

Minn. Stat. § 169.999, subd. 2.

Minn. Stat. § 169.985.

## D. Information sheet

Cities must inform the driver of the vehicle that the driver has the right to contest the citation. It's a good idea to do this in writing. One strategy is to develop an information sheet to give to anyone who gets an administrative traffic citation describing how the person may contest it.

## E. Use recommended uniform traffic citation

The commissioner of Public Safety approved a sample form in 2009 for the uniform traffic citation format. Cities may use this form and modify it for a city-specific process. Because provisions within this form potentially involve constitutional rights, the city attorney should review all modifications to ensure it conforms to local procedures and current law.

## F. Track citations

The city must track the number of administrative traffic citations it issues and the money it collects. The state auditor must then collect that information from cities each year as a line item in the annual financial reporting forms. The line item specifically asks for administrative fines collected pursuant to Minn. Stat. § 169.999.

## III. Issuing citations

Peace officers may issue an administrative traffic citation to a vehicle operator who:

- Violates speed limits by less than 10 miles per hour.
- Fails to obey a stop line.
- Operates a vehicle with a cracked windshield or other specific equipment violation.

However, cities are not required to issue administrative citations under the law. The process is entirely optional. Cities that believe that administrative citations make sense for them may adopt a resolution to issue such citations. In addition, where administrative citations have been adopted, the city cannot require, by ordinance or otherwise, that peace officers issue administrative citations. Under the law, peace officers always have the discretion to issue an administrative citation, give a warning, or issue a state criminal ticket.

## RELEVANT LINKS:

[Minn. Stat. § 169.999, subd. 8.](#)  
[Minn. Stat. § 171.163.](#)  
[49 C.F.R. § 384.226.](#)

[Minn. Stat. § 169.14.](#)

[Minn. Stat. § 169.999, subd. 1\(b\).](#)

[Minnesota Manual on Uniform Traffic Control Devices, § 3B.16.](#)

In addition, cities may not set quotas that require or suggest that an officer issue a certain number of administrative citations.

Due to state and federal law, people who have a commercial driver's license or who are driving a commercial vehicle at the time of the citation may not be issued an administrative citation.

## A. Traffic offenses

### 1. Speed limits

Cities may issue administrative citations for violations of Minn. Stat. § 169.14 where the speed of the vehicle is under 10 miles per hour in excess of the lawful speed limit. The actual speed of the vehicle must be listed on the citation, and peace officers may not reduce the recorded speed for the purposes of issuing an administrative citation.

It is important to note that this statute generally prohibits speeding above the posted limit, but also prohibits: operating a vehicle at a "speed greater than is reasonable and prudent under the conditions" or without due care; failing to reduce speed when approaching or passing an authorized emergency vehicle stopped with emergency lights flashing; failing to reduce speed when approaching and crossing an intersection or railway grade crossing; failing to reduce speed when special hazards exist (such as pedestrians, other traffic, weather or highway conditions); driving slower than a posted minimum speed; and selling, offering for sale, using, or possessing any radar jammer in Minnesota.

Issuance of an administrative citation for reasons other than simple speeding under Minn. Stat. § 169.14 remains subject to the 10-mile-per-hour limit. Specifically, if the citation for failing to reduce speed in adverse weather conditions involves speeding that is greater than 10 miles per hour over the limit, the officer should not issue an administrative citation.

### 2. Stop line violations

The law states that cities may issue administrative citations to vehicle operators who "fail to obey a stop line." A stop line violation is not a failure to stop completely as directed by a stop sign or traffic control signal. A regular criminal citation must still be issued for this type of traffic violation. A stop line is a solid white line extending across approach lanes that indicates where vehicles are required to stop in compliance with a stop sign, traffic control signal, or some other traffic control device. An administrative citation for a stop line violation may be issued to a vehicle operator who fails to heed the direction for where to stop, presumably by driving over the line.

## RELEVANT LINKS:

See Appendix A, List of Citable Offenses.

### 3. Equipment violations

Cities may issue administrative citations for violations of certain statutes relating mainly to violations of the law on required vehicle equipment, including but not limited to: hitching a toboggan, hand sled, bicycle, or other similar device onto any motor vehicle while being used on a street; driving vehicles in an unsafe condition as to endanger any person; wearing headphones or earphones that are used in both ears while driving; texting while driving; failing to use lights while driving at night or bad weather; having broken tail/brake lights; failing to use a red flag on a projecting load; failing to use a slow moving vehicle sign; having loud mufflers and exhaust systems not in good working order; having cracked or obstructed windshields; and using unsafe or unauthorized metal studded tires.

Although the administrative citation statute does cover texting while driving, the continued ability to issue administrative citations for this offense is unclear given recent changes to the texting while driving statute. When the administrative citation statute was enacted in 2009, texting while driving was not recognized as the significant issue it is today and there was no fine for a violation. In 2015, the Legislature amended the texting while driving statute and added a \$225 fine as a penalty for a violation. This fine conflicts with the limited \$60 fine allowed for administrative citations.

There is another statute in state law that prohibits differing penalties for the same traffic offense. Because there is a conflict between the \$60 administrative citation fine and the \$225 fine (both for the same offense of texting while driving), officers probably should no longer issue administrative citations for texting while driving. Instead the better procedure likely would be to issue a citation under the statutory provision with the higher fine. (It is anticipated that texting while driving will be removed from the administrative traffic citation statute in the near future).

### B. Non-traffic offenses

The law does not preclude the use of administrative citations for non-traffic offenses. Cities may still issue administrative citations pursuant to local ordinance for non-traffic matters such as liquor licensing ordinance violations, nuisance and animal ordinance violations, etc. However, the law specifically lists out the traffic offenses under Minn. Stat., ch. 169 for which an administrative citation may be issued as discussed above, and specifically prohibits the issuance of administrative citations for other violations of Minn. Stat., ch. 169.

[Minn. Stat. § 169.04 \(a\)\(1\).](#)

### C. Other city traffic ordinance violations

Cities have ample authority to adopt regulations to “regulate the use” of city streets in a manner that is consistent with Minn. Stat., ch. 169. Some cities have adopted traffic ordinances on subjects not regulated by Minn. Stat., ch. 169 and may be currently imposing administrative fines for violations. For example, cities may have ordinances prohibiting cruising, engine retarding braking (sometimes called “Jake” braking), or excessive acceleration. Under the law, cities may continue to issue city administrative citations for these types of local ordinance violations consistent with city ordinance. However, cities may not use the uniform administrative citation designed by the commissioner of Public Safety for these types of citations. Cities must develop or continue to use their own citation form for these violations.

### D. Local parking ordinance violations

The law specifically lists out the traffic offenses under Minn. Stat., ch. 169 for which an administrative citation may be issued, and specifically prohibits the issuance of administrative citations for other violations of Minn. Stat., ch. 169. Parking violations are not specifically listed as an offense for which the uniform administrative citation can be issued.

However, cities may still issue local administrative citations for parking violations because state law specifically states

*“the provisions of this chapter [Minn. Stat., ch. 169—including Minn. Stat., § 169.999] shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction . . . and within the reasonable exercise of the police power from . . . regulating the standing or parking of vehicles.”*

### E. Use of previous administrative citations systems for traffic offenses

It is highly likely that cities that are issuing administrative citations for Minn. Stat. ch. 169 traffic offenses under systems established prior to the 2009 law change should cease or drastically revamp their citation program. The law specifically lists out the traffic offenses under Minn. Stat., ch. 169 for which an administrative citation may be issued, and specifically prohibits the issuance of administrative citations for other violations of Minn. Stat., ch. 169. The law also requires a city to use a prescribed uniform citation form designed by the commissioner of Public Safety. Finally, the statute requires a set \$60 administrative fine, mandates how that fine must be divided between the city and state, and requires the city to spend at least one-half of its fine revenues on law enforcement purposes.

## RELEVANT LINKS:

[Minn. Stat. § 169.999, subd. 5.](#)



*Administrative Fine  
Transmittal, LMC model  
letter*

[Research@lmc.org](mailto:Research@lmc.org)  
651.281.1200  
800.925.1122

## IV. Administrative fines

Again, the law requires that a city impose a fine of \$60 per citation. When a city peace officer issues the administrative citation, the fine must be shared with the state in the following manner:

- Two-thirds of the fine (\$40) remains with the city that issued the administrative citation.
- One-third of the fine (\$20) must be paid to the state commissioner of Finance for deposit into the state's general fund.
- One-half of the city's share of the fine (\$20) must be used for law enforcement purposes. The law specifically requires that the funds "be used to supplement but not supplant any existing law enforcement funding."

If a citation recipient does not pay the fine, the city may choose to dismiss the administrative citation and issue a state criminal traffic citation instead. In the alternative, the city may use traditional debt collection methods. There is, however, no authority in the law for cities to specially assess the fine against real property for payment as taxes.

Cities must track both the number of citations issued and separately account for any fine revenues in all city financial reports, summaries, and audits.

## V. Further assistance

The League's Research Service is available to help you with your questions about administrative fines.

## Appendix A: List of citable offenses

This is not a list of offenses that *must* be cited, only a list of violations for which an administrative traffic citation *may* be written pursuant to Minn. Stat. § 169.999.

This list was originally compiled by a policy analyst for the state patrol. The first column of the original list included code numbers used by the state patrol. Where no state patrol number is given, the material has been added.

*Note: This list is not provided as legal advice; consult your attorney concerning specific violations as not all noted sections may include his or her interpretation of a citable offense.*

State Patrol Code No.	Offense	Authority to Cite the Offense
1004	Speed less than 10 mph above posted speed limit	<a href="#">Minn. Stat. § 169.14.</a>
	Work zone speeds as set by state or the local road authority	<a href="#">Minn. Stat. § 169.14, subd 5d.</a>
	Speed greater than is reasonable and prudent under the conditions or without due care	<a href="#">Minn. Stat. § 169.14.</a>
	Failing to reduce speed when approaching or passing an authorized emergency vehicle stopped with emergency light flashing	<a href="#">Minn. Stat. § 169.14, subd. 3.</a>
	Failing to reduce speed when approaching and crossing an intersection or railway grade crossing	<a href="#">Minn. Stat. § 169.14, subd. 3.</a>
	Failing to reduce speed when special hazards exist (such as pedestrians, other traffic, weather, or highway conditions)	<a href="#">Minn. Stat. § 169.14, subd. 3.</a>
	Driving slower than a posted minimum speed	<a href="#">Minn. Stat. § 169.14, subd. 8.</a>
	Possessing any radar jammer in Minnesota	<a href="#">Minn. Stat. § 169.14, subd. 12.</a>
	Hitching a toboggan, hand sled, bicycle, or other similar device onto any motor vehicle while being used on a street	<a href="#">Minn. Stat. § 169.46.</a>
	Driving vehicles that are in an unsafe condition as to endanger any person	<a href="#">Minn. Stat. § 169.47.</a>



1005	Stop line violation (does not include semaphore)	Minn. Stat. § 169.30(b).
1112	Television and headphone use	Minn. Stat. § 169.471.
1114	Use of phone for texting and/or web access	Minn. Stat. § 169.475.
1102	Defective lighting	Minn. Stat. § 169.49: Headlamps Minn. Stat. § 169.50: Rear lamps Minn. Stat. § 169.51: Clearance and marker lamps Minn. Stat. § 169.53: Lights for parked vehicles Minn. Stat. § 169.55: Lights on all vehicles Minn. Stat. § 169.56: Auxiliary lights Minn. Stat. § 169.57: Vehicle signals, including turn signals Minn. Stat. § 169.58: Identification lamps Minn. Stat. § 169.59: Warning lights Minn. Stat. § 169.60: Distribution of light Minn. Stat. § 169.61: Composite beam Minn. Stat. § 169.63 Number of lamps Minn. Stat. § 169.64: Prohibited lights Minn. Stat. § 169.65: Specifications for lighting and other devices.
1040	Headlamps not on	Minn. Stat. § 169.48 and 169.49, (see above).
1020	Illegal use lights	Minn. Stat. § 169.64 and 169.65, see above).
1199	Projecting load light/flag violation	Minn. Stat. § 169.52.
1102	Slow-moving vehicle sign	Minn. Stat. § 169.522.
1101	Brake violations (including trailer)	Minn. Stat. § 169.67.
1199	Horn	Minn. Stat. § 169.68.
1107	Muffler and noise violation	Minn. Stat. § 169.69 Muffler Minn. Stat. § 169.693: Motor vehicle noise limits
1199	Rearview mirror	Minn. Stat. § 169.70.
1105	Tire violations	Minn. Stat. § 169.72: Studded tires Minn. Stat. § 169.721: Unsafe tires Minn. Stat. § 169.723: Tires considered unsafe Minn. Stat. § 169.724: Prohibition, operating automobile with unsafe tires Minn. Stat. § 169.726: Automobile sale prohibited unless tires are safe. Minn. Stat. § 169.727: Unsafe tires; misdemeanor.
1108	Bumper violations	Minn. Stat. § 169.73.
1199/1081/ 1110	Window violations (including tint)	Minn. Stat. § 169.71.
1199	Wheel fenders/flaps (trucks)	Minn. Stat. § 169.733.
1199	Flare/triangle violation	Minn. Stat. § 169.75.
	Wheel fenders/flaps (cars)	Minn. Stat. § 169.734.
	Window violations (safety glass requirements)	Minn. Stat. § 169.74.
	Missing plates	Minn. Stat. § 169.79.

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## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item #2
<b>Attachment</b>	Sample Ordinance, Draft Order and Resolution
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Vacant Properties
<b>Description</b>	<p>There will be two items discussed as to relate to vacant properties within the City of Falcon Heights. The first item to discuss is the proposed ordinance. The second item to discuss is the abatement of a property within the City that has health and safety concerns.</p> <p>I have included an example ordinance that was considered by the City of Burnsville. Documents are provided by the City Attorney's Office.</p>
<b>Budget Impact</b>	The impact will be the cost of abatement. The City may not recapture cost for an long extended amount of time.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>· City of Burnsville Example</li> <li>· Order to Correct Hazardous Building</li> <li>· Hazardous Building Resolution</li> </ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed for the ordinance and the abatement of a property on California Ave.

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**ORDINANCE NO. \_\_**

**CITY OF BURNSVILLE  
DAKOTA COUNTY, MINNESOTA**

**AN ORDINANCE ADDING TITLE 4 CHAPTER 10 TO THE  
THE BURNSVILLE CITY CODE CONCERNING VACANT PROPERTIES**

THE CITY COUNCIL OF THE CITY OF BURNSVILLE, MINNESOTA ORDAINS:

**SECTION 1.** Title 4 (Building Regulations) of the Burnsville City Code is amended to add Chapter 10: Vacant Properties to read:

**4-10-1: DECLARATION OF POLICY:**

The purpose of this chapter is to protect the public health, safety, and welfare by enactment of this ordinance that:

- (1) Establishes a program for identification and registration of vacant buildings.
- (2) Determines the responsibilities of owners of vacant buildings and structures.
- (3) Provides for administration, enforcement, and penalties regarding this program and the regulations.

**4-10-2: DEFINITIONS:**

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

**CODE VIOLATIONS:** Violations of any code adopted and/or enforced by the city, which may include but is not limited to the City Code, the State Building Code, Fire Code, and Zoning Code.

**DANGEROUS STRUCTURE:** A structure that is potentially hazardous to persons or property, including, but not limited to:

1. A structure which is in danger of partial or complete collapse;
2. A structure with any exterior parts which are loose or in danger of falling; or
3. A structure with any parts, such as floors, porches, railings, stairs, ramps, balconies or roofs, which are collapsed, in danger of collapsing or unable to support the weight of normally imposed loads, or otherwise determined to be hazardous or dangerous in their present condition.

**ENFORCEMENT OFFICER:** The Building Official or duly authorized representative.

**OCCUPIED:** A building that is used for legal occupancy.

**OWNER:** Those persons shown to be the owner or owners on the records of the Dakota County Department of Property Taxation and Records, those identified as the owner or owners on a vacant building registration form, holder of an unrecorded contract for deed, a mortgagee or vendee in possession, a mortgagor or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lesser state therein. Any such person shall have a joint and several obligation for compliance with the provisions of this chapter.

**SECURED BY OTHER THAN NORMAL MEANS:** A building secured by means other than those used in the design of the building.

**UNOCCUPIED:** A building that is not being used for a legal occupancy.

**UNSECURED:** A building or portion of a building that is open to entry by unauthorized persons without the use of tools or ladders.

**VACANT BUILDING:** A building or portion of a building that is:

1. Unoccupied and unsecured;
2. Unoccupied and secured by other than normal means;
3. Unoccupied and a dangerous structure;
4. Unoccupied and condemned;
5. Unoccupied and has multiple housing or building code violations;
6. Condemned and illegally occupied; or
7. Unoccupied for a period of time over three hundred sixty-five (365) days and during which time the enforcement officer has issued an order to correct nuisance conditions.

#### **4-10-3: VACANT BUILDING REGISTRATION:**

(A) The Owner of a vacant building shall register with the enforcement officer not later than thirty (30) days after any building in the city becomes a vacant building, as defined in Section 4-10-2, and every twelve (12) months thereafter so long as the building remains vacant. The Owner shall pay a vacant building fee in the amount prescribed in this Chapter or the City's annual adopted fee ordinance for each registered building.

(B) The registration shall be submitted on forms provided by the enforcement officer and shall include the following information supplied by the owner:

- (1) A description of the premises;
- (2) The names and addresses of the owner(s) and contact person;
- (3) The names and addresses of all known lienholders and all other parties with an ownership interest in the building; and
- (4) The period of time the building is expected to remain vacant.

(C) The owner shall comply with all applicable laws and codes. The owner shall notify the enforcement officer of any changes in information supplied as part of the vacant building registration within thirty (30) days of the change.

(D) The owner shall keep the building secured and safe and the building and grounds properly maintained until the rehabilitation or demolition has been completed and the property is reoccupied, including but not limited to mowing the lawn and removing snow from drives and sidewalks, providing adequate heat or disconnecting water service during winter months, and securing other utility and property related services.

(E) Failure of the owner or any subsequent owner to maintain the building and premises shall be subject to any enforcement actions or penalties provided by law including an abatement completed by the city and assessed against the property pursuant to state law and city code.

(F) Vacant building fees:

1. The owner of a vacant building shall pay an annual registration fee as outlined in city policy each year the building remains a vacant building. The registration fee is intended to at least partially recoup and be reasonably related to the administrative costs for registering and processing the vacant building owner registration form and for the costs of the city in monitoring the vacant building site.
2. The first annual fee shall be paid no later than thirty (30) days after the building becomes vacant. If the fee is not paid within thirty (30) days of being due, the owner shall be subject to prosecution as prescribed in Section 4-10-8.
3. The fee shall be paid in full prior to the issuance of any building permits, with the exception of a demolition permit.
4. All delinquent fees shall be paid by the owner prior to any transfer of an ownership interest in any vacant building. If the fees are not paid prior to any transfer, the new owner shall pay the annual fee no later than thirty (30) days after the transfer of ownership and subsequent annual fees shall be due on the new anniversary date.

(G) The enforcement officer shall include in the file any property-specific written statements from community organizations, other interested parties or citizens regarding the history, problems, status or blighting influence of a vacant building.

#### **4-10-4: EXEMPTIONS:**

A building that has suffered fire damage shall be exempt from the registration requirement for a period of ninety (90) days after the date of the fire. The exemption may be extended if the property owner submits a request for extending the exemption in writing to the enforcement officer. This request shall include the following information supplied by the owner:

- (1) A description of the premises.
- (2) The names and address of the owner or owners.
- (3) A statement of intent to repair and reoccupy the building in an expedient manner.

#### **4-10-5: INSPECTIONS:**

The enforcement officer shall inspect any premises in the city for the purpose of enforcing and assuring compliance with the provisions of this chapter. Upon the request of the enforcement

officer, an owner shall provide access to all interior portions of an unoccupied building in order to permit a complete inspection.

**4-10-6: SALE OF VACANT BUILDING:**

The new owner(s) shall register or re-register the vacant building, as provided in Section 4-10-3, with the enforcement officer within thirty (30) days of any transfer of an ownership interest in a vacant building.

**4-10-7: OCCUPANCY:**

No vacant building may be occupied without an inspection and approval by the City for occupancy.

**4-10-8: PENALTIES:**

Any person violating any provision of this chapter or providing false information to the enforcement officer shall be punished as provided by Section 1-4-1 of this Code.

**4-10-9: ALTERNATIVE PROCEDURES:**

Nothing in this chapter shall be deemed to abolish or impair existing remedies of the city authorized under the City Code or Minnesota Statutes Sections 463.15 through 463.26.

**SECTION 2.** This ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the City Council of the City of Burnsville, Minnesota.

CITY OF BURNSVILLE

BY: \_\_\_\_\_  
Elizabeth B. Kautz, Mayor

ATTEST:

\_\_\_\_\_  
Macheal Brooks, Deputy City Clerk



**FALCON HEIGHTS CITY COUNCIL  
FALCON HEIGHTS, MINNESOTA**

A general meeting of the City Council of the City of Falcon Heights, Minnesota was called to order by Mayor Peter Lindstrom at \_\_\_\_\_ p.m. in the Council Chambers of City Hall, Falcon Heights, Minnesota, on \_\_\_\_\_, February \_\_\_\_, 2019. The following Council Members were present: \_\_\_\_\_. A motion to adopt the following resolution was made by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_.

**FALCON HEIGHTS CITY COUNCIL  
RESOLUTION NO. 2018-\_\_**

**RESOLUTION ORDERING CORRECTION  
OR REMOVAL OF HAZARDOUS CONDITIONS  
OR RAZING OR REMOVAL OF BUILDING**

**WHEREAS**, the City of Falcon Heights has attempted without success to have the owner of certain property at 1354 California Avenue, Falcon Heights, Minnesota, in the County of Ramsey (“Subject Property”), remedy the hazardous condition of the Subject Property and residential home thereon (“Subject Building”).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Falcon Heights, Minnesota:

1. The City has fully considered all evidence relating to the hazardous condition of the Subject Property and Subject Building.
2. After fully considering all of the evidence pertaining to the hazardous condition of the Subject Property and Subject Building, the City finds:
  - a. The Subject Building is in severe disrepair. The building is currently unoccupied and has been for a significant period of time. The front stairs are crumbling due to water intrusion. The side stairs are deteriorating and the wood is rotting away. Water has penetrated the inside of some walls of the building. Mice and rats have infested the building. Boxes of debris are stacked over five feet high around the furnace and water heater. The overall amount of clutter and debris on all levels of the house places excessive weight on the supporting structural frame.
  - b. There is a detached garage on the Subject Property, which is also dilapidated, deteriorating, and structurally unstable. The garage foundation is cracked and separating at the door location. The brick / masonry wall on the south side of the garage is falling apart, leaning

outward at the top of the wall, and is not plumb. The north wall of the garage has openings where brick support has fallen out. The masonry grout is thinning away from the brick, leaving space for water intrusion. The roof of the garage is sagging in the middle of the roof span. Many of the asphalt shingles on the roof of the garage are missing or damaged.

- c. The City Fire Marshall has noted approximately 14 fire code violations, including: unsafe conditions, obstructions of corridors, exits and aisles with large accumulations of combustible materials preventing egress from the building in some areas, doors not readily able to open due to accumulation of materials, building unoccupied and not safeguarded or maintained, storage is not neat and orderly, stacks of materials throughout the interior of the home are unstable, materials are stacked to the ceiling without adequate ceiling clearance, combustible materials are located in exits, enclosures, and stairways, combustible materials are stored in boiler, mechanical, and electrical rooms, fire alarm and detection systems inoperable, not present, or inaccessible for testing due to accumulation of materials, appliances and fixtures appear to be inoperable, electrical panel is inaccessible, large amounts of rat / mouse droppings present hazard to health and safety, accumulation of materials presents both a fire hazard and egress hazard.
  - d. As of the date of this Resolution, the hazardous conditions of the Subject Property and Subject Building have not been remedied.
  - e. Because of the inadequate maintenance, dilapidation, physical damage, abandonment, and unsanitary condition, the Subject Property and Subject Building constitute a fire hazard and a hazard to public safety and are therefore a Hazardous Property and Hazardous Building within the meaning of Minn. Stat. § 463.15, subd. 3.
3. The City hereby directs its legal counsel, Campbell Knutson, P.A., to draft and serve an order to correct or remove the hazardous conditions present in and around Subject Building, to raze or remove the attached garage, and to take all other steps available to prevent the property and building from posing a continuing hazard to the public, including, but not limited to, initiation of a hazardous building action under Minnesota Statutes § 463.15 *et seq.*

Adopted by the City Council on the \_\_\_\_<sup>th</sup> day of February 2018.

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**Mayor Peter Lindstrom**

Attest:

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**Sack Thongvanh, City Administrator**

The following Council Members voted in favor:

The following Council Members voted against or abstained:

**Whereupon the motion was duly passed and executed.**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

Court File No. \_\_\_\_\_

**IN RE:**

The Matter of a Hazardous Building  
Located at 1354 California Avenue,  
City of Falcon Heights, Ramsey County, Minnesota

**ORDER TO CORRECT OR REMOVE  
HAZARDOUS CONDITIONS  
OR RAZE OR REMOVE BUILDINGS**

**TO: Owners and lienholders of the above real estate:**

**TO BE OBTAINED FROM TITLE REPORT**

**PLEASE BE ADVISED** that pursuant to order of the Falcon Heights City Council and by authority of Minnesota Statutes § 463.15 *et seq.*, you have twenty (20) days from the date of service of this Order upon you, to remedy the fire, health, and safety hazards and the hazardous condition of the property and buildings located at 1354 California Avenue, Falcon Heights, Minnesota 553113 located in the County of Ramsey, and legally described as follows:

Lots \_\_ and \_\_, Block \_\_, , Ramsey County, Minnesota.

Tax ID No. \_\_\_\_\_

On February \_\_, 2018, the Falcon Heights City Council issued a Resolution finding that because of inadequate maintenance, dilapidation, physical damage, abandonment, and unsanitary condition, the Subject Property and Subject Building constitute a fire hazard and a hazard to public safety and are therefore a Hazardous Property and Hazardous Building within the meaning of Minn. Stat. § 463.15, subd. 3.

The Subject Building has been dilapidated for an extended period of time. The property is unoccupied and has been for a substantial period of time. The front stairs are crumbling due to

water intrusion. The side stairs are deteriorating and the wood is rotting away. Water has penetrated the inside of some walls of the building. Mice and rats have infested the building. Boxes of debris are stacked throughout the house, blocking corridors, aisles, and exits. Combustible materials are stacked over five feet high around the furnace and water heater. The overall amount of clutter and debris on all levels places excessive weight on the supporting structural frame of the house.

There is a detached garage on the Subject Property, which is also dilapidated, deteriorating, and structurally unstable. The garage foundation is cracked and separating at the door location. The brick / masonry wall on the south side of the garage is falling apart, leaning outward at the top of the wall, and is not plumb. The north wall of the garage has openings where brick support has fallen out. The masonry grout is chipping away from the brick, leaving space for water intrusion. The roof of the garage is sagging in the middle of the roof span. Many of the asphalt shingles on the roof of the garage are missing or damaged.

To date, no progress has been made toward correcting or removing the hazardous conditions. The following violations must be remedied or removed, and inspected within twenty (20) days from the date of service of this Order:

1. Repair crumbling steps at front of house
2. Repair crumbling or rotting steps on side of house
3. Prevent future water intrusion into foundation of house
4. Repair any damage caused by existing water intrusion into foundation of house
5. Remediate overgrowth of vines, plantings, vegetation growth on and around house
6. Eradicate rodent infestations and clean up resulting hazardous conditions
7. Clear exits, aisles, corridors, stairs of obstructions and combustible materials
8. Remove large accumulation of combustible materials throughout house
9. Remove accumulated materials so that doors open readily and properly
10. Remove unstable stacks of material
11. Remove materials stacked to ceiling, create required ceiling clearance
12. Remove combustible materials stored in boiler, mechanical, electrical rooms
13. Install or make operable fire alarm and detection systems, test for proper operation
14. Create adequate working space and clearance for appliances and fixtures

15. Create proper access to electrical panel
16. Remove rat / mouse droppings and related biohazardous conditions
17. Demolish detached garage

If you fail to remedy the hazardous conditions of the buildings, the City will seek permission from the District Court for the City to repair or remove the hazardous conditions of the buildings, including demolition of the buildings, destruction and removal of all personal property within the buildings, and grading of the property. The City will move the District Court for summary enforcement of this Order pursuant to Minn. Stat. § 463.19 unless you remedy the situation within said twenty (20) day period or unless an answer is filed within twenty (20) days of service of this Order upon you pursuant to Minn. Stat. § 463.18. Upon enforcement of the Order by the City, all costs expended by the City will be assessed against the real property and collected as other taxes as provided in Minn. Stat. §§ 463.21 & 463.22.

Dated: \_\_\_\_\_, 2018

**CAMPBELL KNUTSON**  
*Professional Association*

By: \_\_\_\_\_  
Soren M. Mattick (#27785X)  
Falcon Heights City Attorney  
Grand Oak Office Center I  
860 Blue Gentian Road, Suite 290  
Eagan, Minnesota 55121  
Telephone: (651) 452-5000

**ACKNOWLEDGMENT**

The City of Falcon Heights, by and through its undersigned attorney, acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minnesota Statutes § 549.211, subd. 1.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Soren M. Mattick

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*The City That Soars!*

## REQUEST FOR PLANNING COMMISSION ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item# 3
<b>Title</b>	City Code Amendment: REGULATING SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY
<b>Submitted By</b>	Paul Moretto, Community Development Coordinator

<b>Description</b>	Right of Way Ordinance – Small Wireless Facilities
<b>Background</b>	<p>Requesting the City Council; review for consideration attached ordinance O18-XX amending Chapter 42, Article II Pertaining to Telecommunications Right of Way Management</p> <p><b>History:</b></p> <p>State law gives “telecommunications right of way users” the right to install facilities in the public right of way and use the public right of way for delivery of their services. This right is subject to local governmental authority to manage the right of way by permitting. Local governments affirmatively elect to manage the right of way by adopting a right of way ordinance. Under the right of way ordinance, use of the right of way may be conditioned or denied if necessary to protect the public health, safety, or welfare.</p> <p>In 2017, the state legislature amended the state statutes that authorize local government units (“LGU”) to regulate the right of way. The amendments permit wireless providers to deploy “small wireless facilities” and “wireless support structures” in the right of way. A “small wireless facility” is statutorily defined as an antenna that is located inside an enclosure that is no more than six cubic feet in volume with all other associated wireless equipment being no more than 28 cubic feet in volume. A “wireless support structure” is statutorily defined as a new or existing structure (i.e. pole) in the public right of way designed to support or capable of supporting small wireless facilities, as reasonably determined by a LGU.</p> <p>The new law requires LGU’s to approve or deny small wireless facility permit applications within 90 days. The failure to timely act on a permit application results in the permit being “automatically issued.” Denial of a permit application must be in writing and state the basis for denial.</p> <p>Under the new law LGU’s are entitled to recover right of way management costs from wireless providers that use the right of way through permit fees.</p> <p>In pushing for these amendments to state law, one of the wireless industry’s goals was to require that poles or similar structures owned by the LGU in the right of way (light poles, for example) be made available for attachment of small wireless facilities. The new law expressly allows the LGU to determine whether a particular</p>

	<p>pole or other structure in the right of way was designated to support proposed wireless equipment or is capable of doing so. An LGU may deny a wireless provider access to a particular facility based on this determination or other public health, safety, or welfare concerns.</p> <p>Another goal of the wireless industry was to obtain the right to use LGU owned facilities in the right of way for little or no rent. The new law allows LGUs to impose rent of up to \$150 annually plus \$25 for maintenance for each site. Additional fees may be imposed if the wireless provider uses LGU-purchased electricity rather than separately metering its facility.</p> <p>The new law authorizes LGU's to require separate agreements with wireless providers governing attachments to poles or other facilities the LGU owns.</p> <p>The new law makes small wireless facilities a permitted use in all right of way regardless of the underlying zoning district in which the right of way is located.</p> <p><b>How does this change Falcon Heights' Code?</b></p> <p><b>The ordinance amends City Code Chapter 42 Article 2 pertaining to telecommunication facilities right of way management in the following ways:</b></p> <ul style="list-style-type: none"> <li>· The ordinance creates a small wireless facility permit to collocate in the public right of way.</li> <li>· The ordinance imposes a small wireless facility permit fee.</li> <li>· The ordinance incorporates the 90 day deadline for the City action on small wireless facility permit applications.</li> <li>· The ordinance sets a 50 foot maximum height limitation on wireless support structures.</li> <li>· The ordinance limits wireless facilities from extending more than ten feet above a wireless support structure.</li> <li>· The ordinance permits the City to impose separation requirements between new and existing wireless support structures.</li> <li>· The ordinance requires that applicants seeking to collocate small wireless facilities on City owned structures enter into a collocation agreement with the City. Under the collocation agreement the City will recover its right of way management costs, statutory rent, and cost of electricity.</li> <li>· The ordinance provides for denial of permit applications and revocation of permits when necessary to protect health, safety, and welfare of the community.</li> </ul>
<b>Budget Impact</b>	<p>The City will be able to recover some of its costs for managing the right of way from small wireless facility permittees. The City will also be able to charge rent to collocate small wireless facilities on City structures in the right of way.</p>

<b>Attachment(s)</b>	· Draft Ordinance
<b>Action(s) Requested</b>	Staff recommends City Council APPROVAL of ordinance O18-XX Regulating Small Wireless Facilities in the Public Right-of-way.

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**CITY OF FALCON HEIGHTS, RAMSEY COUNTY, MINNESOTA**

**ORDINANCE NO. \_\_\_\_.**

**AN ORDINANCE AMENDING CHAPTER 42, ARTICLE II PERTAINING TO  
TELECOMMUNICATION FACILITIES RIGHT OF WAY MANAGEMENT**

**THE CITY COUNCIL OF FALCON HEIGHTS, RAMSEY COUNTY, MINNESOTA,  
ORDAINS:**

**SECTION 1.** Chapter 42, Article II of the Falcon Heights City Code is amended by adding the underlined language and deleting the strikethrough language as follows:

**Sec. 42-23. - Purpose; intent; interpretation.**

- (a) *Purpose.* To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the rights-of-way, the city strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances.
- (b) *Intent.* Accordingly, the city hereby enacts this new article relating to right-of-way permits and administration. This article imposes regulation on the placement and maintenance of facilities and equipment currently within its right-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this article, persons excavating and obstructing the right-of-way will bear financial responsibility for their work. Finally, this article provides for recovery of out-of-pocket and projected costs from persons using the public right-of-way.
- (c) *Interpretation.* This article shall be interpreted consistently with Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistently with Minn. Rules 7819.0050—7819.9950 where possible. To the extent any provision of this article cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This article shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

**Sec. 42-24. - Management of the right-of-way.**

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to Minn. Stats. § 237.163, subd. 2(b), to manage the right-of-way under its jurisdiction. The term "manage the right-of-way" means the authority of the city to do any or all of the following:

- (1) Require registration;
- (2) Require construction performance bonds and insurance coverage;

- (3) Establish installation and construction standards;
- (4) Establish and define location and relocation requirements for equipment and facilities;
- (5) Establish coordination and timing requirements;
- (6) Require right-of-way users to submit henceforth required by the city project data reasonably necessary to allow the city to develop a right-of-way mapping system including GIS system information;
- (7) Require right-of-way users to submit, upon request of the city, existing data on the location of user's facilities occupying the public right-of-way within the city. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
- (8) Establish right-of-way permitting requirements for excavation and obstruction;
- (9) Establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation or construction; and impose reasonable penalties for unreasonable delays in construction.

**Sec. 42-25. - Definitions.**

The definitions included in Minn. Stats. § 237.162 and Minn. Rule 7819.0100, subpt. 1—25 are hereby adopted by reference and incorporated into this article as if set out in full.

**Sec. 42-26. - Administration.**

The city administrator is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city administrator may delegate any or all of the duties hereunder. Authority granted to the city administrator under this section may, in the alternative, be exercised by the deputy clerk.

**Sec. 42-27. - Registration; bond; exceptions.**

- (a) *Registration.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment or facilities located in any right-of-way must register with the city. Registration will consist of providing application information to, and as required by the city, paying a registration fee, and posting a performance and restoration bond. Registration fee and bond amount shall be set by resolution of the city council.
- (b) *Performance and restoration bond.* The performance and restoration bond required in this section, and in sections 42-31(5) and 42-34(d) shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this section, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this section or any other applicable laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment or facilities in rights-of-way, the performance and restoration bond shall be in an amount sufficient to cover 100 percent of the estimated cost of such work, as documented by the person proposing to perform such

work, or in such lesser amounts as may be determined by the city administrator, taking into account the amount of equipment and facilities in the right-of-way, the location and method of installation of the equipment and facilities, the conflict or interference of such equipment or facilities with the equipment or facilities of other persons, and the purposes and policies of this section. Sixty days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city.

- (c) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.
- (d) *Exceptions.*
  - (1) Nothing herein shall be construed to repeal or amend the rights of persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, and the city may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner.
  - (2) Irrigation systems shall be allowed in the right-of-way without a permit and installers shall be exempt from registration. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any city or municipal activity or by any permitted utility activity.
  - (3) Resident-owned sewer and water service lines to a city main and resident-owned drain tile lines shall not be required to register, unless requested by the city, but shall be required to obtain permits for excavation and obstruction.
  - (4) Nothing herein relieves a person from complying with the provisions of Minn. Stats. ch. 216D ("One Call Excavation Notice System").

**Sec. 42-28. - Registration information.**

- (a) *Required information.* The information provided to the city administrator at the time of registration shall include, and be on the form approved by the city or this article, but not be limited to:
  - (1) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
  - (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - (3) A certificate of insurance or self-insurance:

- a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed or otherwise authorized to do business in the state, or a form of self insurance acceptable to the city administrator;
  - b. Verifying that the registrant is insured against claims for bodily and personal injury, including death, as well as claims for property damage arising out of the: (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - c. Naming the city as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;
  - d. Requiring that the city administrator be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
  - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city administrator in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.
- (4) The city may require a copy of the actual insurance policies if necessary to ensure the city administrator that the policy provides adequate third party claim coverage and city indemnity and defense coverage.
- (5) If the person is a corporation, a copy of the certificate required to be filed as recorded and certified to by the secretary of state.
- (6) A copy of the person's order granting a certificate of authority from the state public utilities commission (PUC) or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval certificate from said commission or other state or federal agency.
- (b) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city administrator information as to changes within 15 days following the date on which the registrant has knowledge of any change.

**Sec. 42-29. - Construction plan; exceptions.**

- (a) *Construction/major maintenance plan.* Each registrant that provides utility service shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city administrator. Such plan shall be submitted using a format designated by the city administrator and shall contain the information determined by the city administrator to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The city shall maintain in the file a copy of the city's construction plan for construction projects. The utility facility plans shall be kept up-to-date by the registrant. The plans shall be on file and available for public inspection. The plan shall include, but not be limited to, the following information:



- (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project");
- (2) How the registrant will accommodate the city plan;
- (3) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

It is the registrant's responsibility to keep informed on available plans. The term "project" in this section shall include both next-year projects and five-year projects but does not include individual service line hookups and minor maintenance unless they are part of an area-wide program.

- (b) *Exception.* Notwithstanding the foregoing, the city administrator will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

**Sec. 42-30. - Permit requirement; extensions; penalty.**

- (a) *Permit required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first registering and having obtained the appropriate right-of-way permit from the city.
  - (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
  - (2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
  - (3) *Small wireless facility permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- (b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person:
  - (1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
  - (2) A new permit or permit extension is granted.

An extension can, at the discretion of the city administrator, or the city administrator's designee, be granted orally and without application of a separate permit fee.
- (c) *Delay penalty.* In accordance with Minn. Rules 7819.1000 subpt. 3 notwithstanding subsection (b) of this section, the city shall establish and may impose a delay penalty for

unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution and shall include any delays or damages charged by the city's construction contractor and may include liquidated damages consistent with the contract. A delay penalty will not be imposed if the delay in project completion is due to circumstances beyond the control of the applicant including, without limitation, inclement weather, acts of God, or civil strife.

- (d) *Permit display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

**Sec. 42-31. - Permit applications; additional bond.**

- (a) Application for a permit is made to the city administrator. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
- (1) Registration with the city pursuant to this article.
  - (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
  - (3) Payment of money due the city for:
    - a. Permit fees, estimated restoration costs and other management costs;
    - b. Prior obstructions or excavations;
    - c. Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the right-of-way or any emergency actions taken by the city;
    - d. Franchise fees or other charges, if applicable.
  - (4) Payment of disputed amounts due the city for prior disputed fees, penalties or other charges by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
  - (5) When an excavation permit is required for purposes of installing additional equipment or facilities, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment or facilities in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with section 42-27(b).
- (b) Deadline for Action. The City shall approve or deny a small wireless facility permit application within ninety (90) days after receiving a complete application. The small wireless facility permit, and any associated encroachment or building permit shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- (c) Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed by the city, provided that all small wireless facilities in an application:
1. are located within a two-mile radius;

2. consist of substantially similar equipment; and
3. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

(d). Tolling of Deadline for Action. The ninety (90) day deadline for action may be tolled if

1. The city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities. In such case, the city may extend the ninety (90) day deadline for all such applications by an additional 30 days by informing the affected applicants in writing of such extension.
2. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within thirty (30) business days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional information in response to a notice of incompleteness, the city has ten (10) days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the ninety (90) day deadline for action.
3. The city and applicant may agree in writing to toll the review period.

#### **Sec. 42-32. - Issuance of permit; conditions.**

- (a) *Permit issuance.* If the applicant has satisfied the requirements of this article, the city shall issue a permit.
- (b) *Conditions.* The city administrator may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current and future use.
- (c) *Small Wireless Facility Conditions.* In addition to part b, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right of way, shall be subject to the following conditions:

1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
  2. No new wireless support structure installed within the right of way shall exceed 50 feet above ground level in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right of way and its current use, and further provided that a wireless support structure that replaces an existing wireless support structure in the public right of way that is greater than fifty (50) feet above ground level in height may be placed at the height of the existing wireless support structure, subject to such conditions or requirements as may be imposed in the applicable permit.
  3. No wireless facility constructed in the right of way after May 30, 2017 may extend more than ten (10) feet above a wireless support structure existing on May 30, 2017.
  4. Where an applicant proposes to install a new wireless support structure in the right of way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right of way.
  5. Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.
  6. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
- (d) *Small Wireless Facility Agreement.* A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right of way, after applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
1. Management costs;
  2. Up to \$150 per year for rent on the city structure;
  3. \$25 per year for maintenance associated with the collocation;
  4. A monthly fee for electrical service as follows:
    - a. \$73 per radio node less than or equal to 100 maximum watts;
    - b. \$182 per radio node over 100 maximum watts;
    - c. The actual cost of electricity, if the actual cost exceed the foregoing.
- The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

- (e) Routine obstructions and excavations. A public right-of-way user may negotiate a permit plan that, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for projects. Projects that do not involve excavation of the paved surface and lasting less than four hours in duration may be included in such plan.

**Sec. 42-33. - Permit fees.**

- (a) Excavation permit fee. The city shall ~~establish~~ impose an excavation right-of-way permit fee schedule specifying fees that are adequate to recover the following costs:
- (1) City management costs;
  - (2) Degradation costs, if applicable;
  - (3) Mapping costs.

Permit fees shall be established by resolution of the city council, as amended from time to time.

- (b) Obstruction permit fee. The city shall establish the obstruction permit fee that shall be in an amount sufficient to recover the city management costs.
- (c) Small wireless facility permit fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
- (1) management costs, and;
  - (2) city engineering, make-ready, and construction costs associated with collection of small wireless facilities.
- (d) Payment of permit fees. No right-of-way permit shall be issued without payment of any and all applicable permit fees unless the city allows applicants to pay such fees within 30 days of billing.
- (e) Nonrefundable. Permit fees that were paid for a permit that the city administrator has revoked for a breach as stated in section 42-43 are not refundable. Permit fees paid for work that is subsequently cancelled are not refundable.
- (f) Management costs; franchise fees. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

**Sec. 42-34. - Right-of-way patching and restoration.**

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under section 42-37
- (b) *Temporary surfacing, patch and restoration.* The permittee shall patch its own work.
- (c) *City restoration.* If the city restores any part of the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If the city restores only the surface of the right-of-way and during the 24 months following such restoration, the pavement settles due to improper back-filling, the permittee shall pay to the city, within 30 days of billing, all costs related to restoring the right-of-way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by

- the permittee, provided, however, that the city will first give the permittee notice of the pavement defect and reasonable opportunity to correct the defect. These costs shall include administrative overhead, mobilization, material, labor, and equipment.
- (d) *Permittee restoration.* If the permittee restores the right-of-way itself, the city may require, at the time of application for a permit, posting of a performance and restoration bond in an amount determined by the city administrator to be sufficient to cover the cost of repair and restoration. The permittee shall determine the type of security it will provide in accordance with Minn. Rule § 7819.3000. If, within 24 months after completion of the restoration of the right-of-way, the city administrator determines that the right-of-way has been properly restored, the posted security shall be released.
  - (e) *Degradation fee and patching.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
  - (f) *Standards.* The permittee shall perform temporary surfacing, patching and restoration including back-fill, compaction, and landscaping according to the standards and with the materials specified by the city administrator. The city administrator shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The city administrator in exercising this authority shall comply with PUC standards for right-of-way restoration and require conformance to MN/DOT standard specifications.
  - (g) *Guarantees.* The permittee guarantees its work and shall maintain it for 24 months following its completion. During this 24-month period it shall, upon notification from the city administrator, correct all restoration work to the extent necessary, using the method required by the city administrator. Said work shall be completed within five business days of the receipt of the notice from the city administrator, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under section 42-37
  - (h) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration of the public right-of-way performed by permittee or its agents. The permittee, upon notification from the city, shall correct all restoration work to the extent necessary under state law and Minnesota Rules, using the method required by the city. Said work shall be completed within ten business days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under section 42-37
  - (i) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city administrator, or fails to satisfactorily and timely complete all restoration required by the city administrator, the city, at its option, may do or sub-contract such work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

**Sec. 42-35. - Joint applications; fees.**

- (a) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (c) *City construction projects.* Registrants who join in a scheduled utility installation or obstruction or excavation coordinated with a city construction project by the city administrator, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee, but a permit is still required.

**Sec. 42-36. - Supplementary applications; permit extensions.**

- (a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area:
  - (1) Make application for a permit extension and pay any additional fees required thereby; and
  - (2) Be granted a new permit or permit extension.

The city administrator or the city administrator's designee may orally approve the permit extension and an additional fee will not be required.

- (b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date. Permits for nonemergency work shall be submitted at least three business days prior to the planned start of work.

**Sec. 42-37. - Obligations; prohibitions.**

- (a) *Compliance with other laws.* Obtaining a right-of-way permit does not release the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other appropriate jurisdiction or other applicable rule, law or regulation. The permittee shall comply with other local codes and with road load restrictions. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stats. ch. 216D ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- (b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters, culverts, ditches, tiles or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- (d) *Traffic control.* Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual and any directions of the city engineer.

**Sec. 42-38. - Denial of permit.**

- (a) The city may deny a permit for failure to meet the requirements and conditions of this article or if the city determines that the denial is necessary to protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current and future use. The city may deny a permit if the applicant has failed to comply with previous permit conditions. The city may withhold issuance of a permit until conditions of previous permit are complied with.
- (b) *Procedural Requirements.* The denial of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant in writing within three business days of the decision to deny a permit. If an application is denied, the applicant may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within thirty (30) days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission

**Sec. 42-39. - Work requirements.**

The excavation, back-filling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules 7819.1100 and 7819.5000 and shall conform to MN/DOT standard specifications and other applicable local requirements, insofar as they are not inconsistent with Minn. Stats. §§ 237.162 and 237.163.

**Sec. 42-40. - Completion; inspection.**

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minn. Rules 7819.1300.
- (b) *Site inspection.* The permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) *Authority of city.*



- (1) At the time of inspection the city administrator may order the immediate cessation and correction of any work that poses a serious threat to the life, health, safety or well-being of the public.
- (2) The city administrator may issue an order to the permittee to correct any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes, so long as the nonconformance constitutes a "substantial breach" as set forth in Minn. Stats. § 237.163, subd. 4(c)(1)—(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the city administrator that the violation has been corrected. If such proof has not been presented within the required time, the city administrator may revoke the permit pursuant to section 42-43
- (3) The cost of any action required by the city shall be paid by the permittee.

**Sec. 42-41. - Work done without a permit.**

- (a) *Emergency situations.*
  - (1) Each registrant shall immediately notify the city administrator of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.
  - (2) If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to correct the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- (b) *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by this article, and deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this article.

**Sec. 42-42. - Supplementary notification.**

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the city of the accurate information as soon as this information is known.

**Sec. 42-43. - Permittee breach; probation; revocation of permits.**

- (a) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the

permit including a threat to the safety of workers, or the right-of-way user or the utility users. A substantial breach by the permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
  - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
  - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
  - (4) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in section 42-45
  - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 42-40
  - (6) Failure of the utility to pay any required costs, fees, or charges billed by the city; or
  - (7) Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual on Uniform Traffic Control Devices.
- (b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (c) *Response to notice of breach.* Within three business days of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall automatically revoke the permit and may include placing the permittee on probation for one full year. No plan will be unreasonably rejected.
- (d) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
- (e) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable management costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.
- (f) *Revoked permit.* Revocation of a right of way permit or small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation. If the city revokes a utility's

permit for breach of this article, the utility will not be allowed to install any utility or to obstruct or excavate within the city right-of-way until the breach situation is corrected to the satisfaction of the city administrator and the permit is reissued.

**Sec. 42-44. - Mapping information.**

- (a) *Mapping information.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. Rules 7819.4000 and 7819.4100.
- (b) *Required application information.* The city requires as part of its permit application the filing of all the following information:
  - (1) Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
    - a. Offsets from property lines, distances from the centerline of the public right-of-way, and curblines as determined by the city;
    - b. Coordinates derived from the coordinate system being used by the city; or
    - c. Any other system agreed upon by the right-of-way user and city.
  - (2) The type and size of the utility facility;
  - (3) A description showing aboveground appurtenances;
  - (4) A legend explaining symbols, characters, abbreviations, scale, and other data shown on the map; and
  - (5) Any facilities to be abandoned, if applicable, in conformance with Minn. Stats. § 216D.04, subd. 3.
- (c) *Changes and corrections.* The application must provide that the applicant agrees to submit "as built" drawings, reflecting any changes and variations from the information provided under subsection (b) of this section.
- (d) *Additional construction information.* In addition, the right-of-way user shall submit to the city at the time the project is completed a completion certificate according to Minn. Rules 7819.1300.
- (e) *Conveying permit data; conversion costs.* A right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. A permit application fee may include the cost to convert the data furnished by the right-of-way user to a format currently in use by the city. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.
- (f) *Data on existing facilities.* At the request of the city, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

**Sec. 42-45. - Location and relocation of facilities.**

- (a) *Conformity to regulations.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities. By submitting a request for a permit the person recognizes they must conform to the existing ordinances and codes of other units of government related to underground placement regardless of how the application is written or permit granted. Utility poles and guy anchors, and any other equipment, shall conform to NCHRP 350 standards for

crashworthiness or must be located outside of applicable clear zones. Any installation that does not conform to the state department of transportation clear zone standards must be approved by the city administrator, and the facility owner shall indemnify and hold harmless the city.

- (b) *Relocation of facilities.* A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way in accordance with the provisions of Minn. Rule 7819.3100, which is incorporated herein and made a part hereof.
- (c) *Relocation notification procedure.*
  - (1) The city administrator shall notify the utility owner at least six months in advance of the need to relocate existing facilities so the owner can plan the relocation.
  - (2) The city administrator shall provide a second notification to the owner one month before the owner needs to begin the relocation.
  - (3) The utility owner shall begin relocation of the facilities within one week of the second notification. All utilities shall be relocated within one month.
  - (4) The city administrator may allow a different schedule if it does not interfere with the city's project.
  - (5) The utility owner shall diligently work to relocate the facilities within the above schedule.
  - (6) When emergency, natural disaster, or unforeseen changes to a programmed project necessitate relocation of a facility, the city shall notify the utility owner as soon as possible, but shall be exempt from the notification schedule described above.
  - (7) In the event that emergency work by the city or another governmental entity in the city right-of-way requires relocation of a utility, the notification requirements above are waived. The city and utility shall coordinate efforts to minimize delay.
- (d) *Delay to city project.* The city administrator shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will be completed in accordance with the above schedule and the city administrator determines this delay will have an adverse impact on a city project, the city administrator may hire a competent contractor to perform the relocation. In that event, the city may charge the utility owner all costs incurred to relocate the facility. The city may charge the utility owner for all costs incurred and requested by a contractor working for the city that is delayed because the relocation is not completed in the scheduled timeframe and for all other additional costs incurred by the city due to the delay. However, this does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

#### **Sec. 42-46. - Pre-excavation facilities location.**

In addition to complying with the requirements of Minn. Stats. ch. 216D ("One Call Excavation Notice System"), before the start date of any right-of-way excavation, each registrant that has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. Any registrant's facilities or equipment that are in the area of work shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation to protect the safety of workers and right-of-way users and other

utility users. If the utility is not at the approved location, it shall be exposed at the permittee's expense or by the city upon written notice to the permittee. The city may, upon said notice, locate said utility at the permittee's expense.

**Sec. 42-47. - Damage to other facilities.**

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city administrator shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way that it or its facilities damage. When the registrant does damage to city facilities in the right-of-way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, it shall correct the damage immediately. If it does not, the city may make such repairs as necessary and charge all of the expenses of the repair to the registrant, which shall be paid within 30 days of billing. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

**Sec. 42-48. - Right-of-way vacation.**

- (a) *Rights of registrant.* If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules 7819.3200 and other applicable laws.
- (b) *Relocation of facilities.* If the vacation requires the relocation of the public right-of-way user's equipment or facility; and the vacation proceedings are initiated by the public right-of-way user or the city for a public project, the public right-of-way user shall pay the relocation costs. If the vacation proceedings are initiated by a person other than the public right-of-way user, the person initiating the vacation shall pay the relocation costs.

**Sec. 42-49. - Indemnification and liability.**

- (a) *Limitation of liability.* Upon the issuance of a public right-of-way permit, the city does not assume any liability for:
  - (1) Injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city; or
  - (2) Claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.
- (b) *Indemnification; defense of registrant; litigation.*
  - (1) *Indemnification of city, city officials.* A registrant or permittee shall indemnify, keep and hold the city, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a public right-of-way permit. The foregoing does not

indemnify the city for its own negligence except for claims arising out of or alleging the city's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

- (2) *Defense of registrant.* This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee or city, and the registrant or permittee, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert on its own behalf.
- (3) *City consent for litigation settlement.* If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the city. The city's consent shall not be unreasonably withheld.
- (4) *Permits conditional to ownership rights.* All permits are granted subject to the ownership rights the city may have in the property involved and to the extent that state, federal or local laws, rules, and regulations allow and said permit is subject to all such laws and rules.

**Sec. 42-50. - Discontinued operations; abandoned or unusable facilities.**

- (a) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant.
- (b) *Removal of facilities.* Any registrant that has abandoned or unusable facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the city waives this requirement.

**Sec. 42-51. - Appeal.**

A right-of-way user that:

- (1) Has been denied registration;
- (2) Has been denied a permit;
- (3) Has had a permit revoked; or
- (4) Believes that the fees imposed are invalid;

may have the denial, revocation or fee imposition reviewed, upon request, by the city council. The city council shall act on a timely written request. A decision by the city council affirming the denial, revocation or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

**Sec. 42-52. - Reservation of regulatory and police powers.**

A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**Sec. 42-53. - Penalty for violation.**

Violation of this article shall result in the assessment of a penalty of \$500.00 per occurrence per site per mile per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this article.

**Secs. 42-54—42-79. - Reserved.**

**SECTION 2.** This ordinance shall be effective upon its passage and publication.

**ADOPTED** by the Falcon Heights City Council this \_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF FALCON HEIGHTS**

By: \_\_\_\_\_  
Peter Lindstrom, Mayor

ATTEST:

\_\_\_\_\_  
Timothy Sandvick, Deputy Clerk

Date Published: \_\_\_\_\_

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*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item #4
<b>Attachment</b>	Draft Resolution
<b>Submitted By</b>	Tim Sandvik, Deputy Clerk

<b>Item</b>	Proclamation by Resolution - Not For Sale Day 2018
<b>Description</b>	<p>On December 7<sup>th</sup>, 2017 the Falcon Heights Community Engagement Commission hosted an annual event recognizing Human Rights Day. The theme this past year was to explore and better understand sexual exploitation and human trafficking. Guest speakers Dave Pinto (State Representative 64B) and Alison Stiver (Safe Journeys Program Manager – Tubman) presented on how this topic affects us here in Minnesota and the need to address those concerns.</p> <p>At the January 29<sup>th</sup>, 2018 Community Engagement Commission meeting, commissioners discussed the proclamation brought before you. Staff noted the study mentioned was conducted by the Urban Outreach Center – University of Minnesota and more information is available online. Cities who have agreed to participate in recognizing Not For Sale Day include (but is not limited to) Plymouth, Minnetonka, Maple Grove, Hopkins, Golden Valley and St. Louis Park. To show support some cities are hosting events, other are displaying blue lights or wearing blue in support of victims of sex trafficking. Council Member Gustafson was present at the commission meeting and can share further perspective. Ultimately, the Community Engagement Commission voted unanimously to recommend the City Council pass the aforementioned proclamation (attached) by resolution.</p>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	· Draft Resolution
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed.

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## **PROCLAMATION TO DECLARE FEBRUARY 15, 2018 “NOT FOR SALE DAY” TO RAISE AWARENESS ABOUT SEXUAL EXPLOITATION**

**WHEREAS**, sexual exploitation is defined as the sexual abuse of someone who engages in commercial sexual activity. Commercial sexual activity occurs when anything of value or a promise of anything of value, such as money, drugs, food, shelter, protection, and other basics of life, is provided to a person by any means in exchange for any type of sexual activity. A third person may or may not be involved; and

**WHEREAS**, sexual trafficking and commercial sexual exploitation is a market built on exploitation, violence, and brutality. Sex buyers use money and power to exploit victims. Traffickers profit by linking buyers to victims for sale. Facilitators of trafficking recruit a supply of victims and prepare them for sale through systematic exploitation of specific needs and vulnerabilities; and

**WHEREAS**, victims of sexual exploitation come from every background, race, gender, sexual orientation, age and economic status. The average age of entry for a minor who is exploited is 12 to 14 years of age. These youth often go unidentified or misidentified and unreported;

**WHEREAS**, a comprehensive Minnesota study released in August 2017, found that buyers typically are white middle-aged males who travel 30 to 60 miles for sex, often before or after work, while on their lunch break, on business trips or male-focused vacations like hunting trips. Based on a national study, 26,000 Minnesota men may have bought sex in the past year; and

**WHEREAS**, the perpetrators of sexual exploitation cause great harm and trauma to their victims, violating their rights, they also traumatize families, and undermine the stability, safety and well-being of our communities; and

**WHEREAS**, law enforcement officials and nonprofits across Minnesota are taking aggressive and new action to crack down on buyers of commercial sex and boosting programs aimed at prevention measures for keeping persons from being exploited and sex-trafficked; and

**WHEREAS**, survivors of sexual exploitation have bravely confronted this issue by telling their stories and leading multidisciplinary coalitions of advocates to support victims of this crime and to educate communities; and

**WHEREAS**, the Minnesota Department of Health and Minnesota Department of Human Services as well as other state and nonprofit agencies along with local municipalities and law enforcement agencies are working together towards providing supportive victim-centered services such as trauma-informed services and safe housing, as well as Regional

Navigators who are responsible for connecting victims with services and serving as experts for their communities; and

**WHEREAS**, “Not for Sale Day” is an opportunity to educate, promote safety for all, accountability and justice, and underscore the commitments made by organizations and communities to end sexual exploitation in our communities.

**NOW, THEREFORE WE**, Mayor Peter Lindstrom and the Falcon Heights City Council, call upon all citizens of Falcon Heights to join in declaring **February 15, 2018**, as “**Not for Sale Day.**”

**FURTHER, LET IT BE KNOWN THAT, WE**, Mayor Peter Lindstrom and the Falcon Heights City Council, do hereby proclaim **February 15, 2018**, as “**Not for Sale Day.**”

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Administrator

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Mayor

DRAFT



*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item #5
<b>Attachment</b>	Supporting Documents
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Tobacco Sales – Proposed for 21 Years and Older
<b>Description</b>	<p>The proposal change for tobacco sales to increase the buying age of 18 years old to 21 years old has been brought forth for Council consideration.</p> <p>Nationally, more than 260 communities in 18 states have adopted a Tobacco 21 policy. The states of California, Hawaii, Maine, New Jersey, and Oregon have also raised their minimum tobacco sale age to 21. Edina was the first Minnesota local jurisdiction to raise its tobacco sale age to 21, effective July 1, 2017. St. Louis Park will be the second with its ordinance going into effect on October 1, 2017.</p>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>· Raising the Minimum Legal Sale Age for Tobacco to 21 – The Estimated Effect for Minnesota</li> <li>· MN Department of Health Website</li> </ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed.

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# Raising the Minimum Legal Sale Age for Tobacco to 21

## *The Estimated Effect for Minnesota*

BY RAYMOND G. BOYLE, PHD, JOHN H. KINGSBURY, PHD, AND MICHAEL J. PARKS, PHD

A campaign to raise the minimum legal sale age for tobacco products from 18 to 21 years known as Tobacco 21 is having a nationwide impact, with at least 200 localities in 14 states having already implemented a Tobacco 21 policy. A 2015 report from the Institute of Medicine (IOM) estimated the effects of such policy on cigarette use at the national level; however, little is known about the expected effects for individual states. The purpose of this study was to consider the effect on smoking initiation in Minnesota if the minimum sale age were 21 in 2015. Estimates from the Minnesota Adolescent Community Cohort and Minnesota Adult Tobacco Survey were used to calculate the uptake of smoking in a hypothetical cohort of Minnesota adolescents 15 to 20 years of age. Expected reductions in initiation in the IOM report were used to calculate the effects of Tobacco 21 policy on smoking uptake in this cohort. Results revealed that raising the sale age to 21 in 2015 would prevent 3,355 young Minnesotans from starting to smoke.

Minnesota addresses tobacco use through a comprehensive approach that includes coordinating smoke-free policies, promoting normative changes in the social acceptability of tobacco use, establishing and expanding the reach of cessation programs, keeping the price of tobacco high and preventing young people from initiating tobacco use. The overall effect of these actions has been a 35% reduction in cigarette smoking in Minnesota since 1999;<sup>1</sup> however, tobacco use remains popular among young adults in Minnesota and nationally.<sup>1,2</sup>

The persistence of tobacco use among young adults, coupled with an evolving marketplace that includes new flavored products (eg, flavored cigars and cigarillos) and new delivery methods (eg, electronic cigarettes), has led to a desire for increased regulation of tobacco. In 2009

the U.S. Congress granted authority to the Food and Drug Administration (FDA) through the Family Smoking Prevention and Tobacco Control Act to regulate the manufacture, distribution and marketing of tobacco products.<sup>3</sup>

Although this law prohibited the FDA from increasing beyond age 18 the national minimum sale age for tobacco products, state and local governments are able to raise the minimum sale age for tobacco. In addition, the law required a study of the health implications of a higher minimum age of legal access. The Institute of Medicine (IOM), now the National Academy of Medicine, conducted the study using national data to consider the effects of different minimum purchase ages (19, 21 or 25 years) and examine multiple outcomes, including preventing young people from starting and encouraging current smokers to quit smoking, and the health benefits from reduced smoking because of an in-

creased purchase age. Nationally, increasing the purchase age to 21 would result in approximately 223,000 fewer premature deaths and 50,000 fewer deaths from lung cancer.<sup>4</sup>

Adolescents younger than age 18 frequently obtain tobacco from social sources who are older than 18 but younger than 21.<sup>5</sup> If tobacco could not be sold to 18- to 20-year-olds, they would be far less likely to provide tobacco to younger teens. By age 21, young adults are likely to have friends older than high-school age and, therefore, less likely to provide tobacco to minors.

The IOM's 2015 report is particularly important because it provides scientific guidance for state and local governments as they seek to protect public health. Although the report provided novel information on the expected effects of Tobacco 21 policy on a national level, it provided little

information about the expected effects at a state level.

The purpose of this study was to consider the effects on smoking initiation in Minnesota if the legal minimum sale age for tobacco products were 21. The specific goal was to calculate how many young people ages 15 to 20 years would not start smoking if the assumptions from the IOM report were applied to Minnesota.

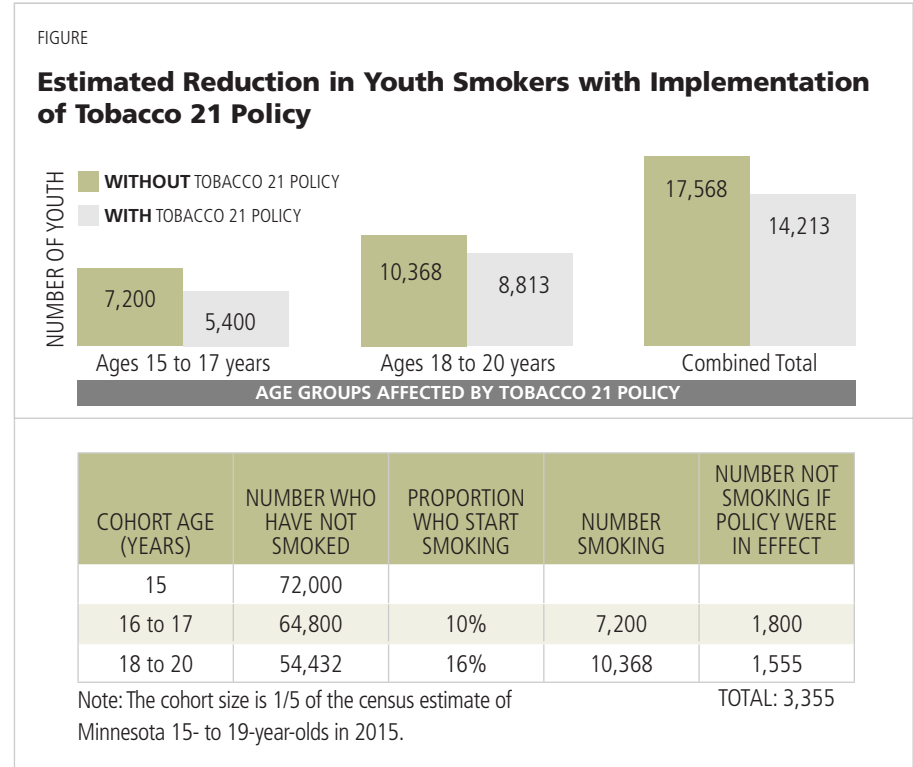
### Methods and Assumptions

**Age groups:** The 2015 IOM report examined effects among specific age groups: under 15 years, 15- to 17-year-olds and 18- to 20-year-olds. In this analysis, we limited the consideration to ages 15 and older.

**Initiation rate:** Cohort studies that follow participants over time provide the best estimates of smoking initiation. The Minnesota Adolescent Community Cohort (MACC) study was a population-based study of Minnesota youth ages 12 to 16 in 2000 who were followed until 2008. In 2003, approximately 19% of the cohort reported smoking in the previous month.<sup>6</sup> Smoking among Minnesota high school students has fallen to about 10% since 2003. Therefore, in this analysis we used 10% as the estimate of smoking initiation among youth 15 to 17 years of age.

In a later analysis of the MACC data, 16% of the cohort who did not start smoking in high school took up smoking (smoked in the past month) between the ages of 18 and 21.<sup>7</sup> This estimate of smoking uptake is consistent with the prevalence of smoking among young adults in the Minnesota Adult Tobacco Survey. For this analysis we used 16% as the estimate of 18- to 20-year-olds who would initiate smoking.

**Estimated effects of Tobacco 21 policy:** An increase in the minimum sale age is expected to apply to all commercial tobacco products; however, for the purpose of estimating effects similar to those in the IOM report, the scope of this study was restricted to cigarette smoking. In addition,



tion, the expected reduction in smoking initiation is thought to vary by age. The effect is expected to be larger among youth 15 to 17 years of age, with an expected reduction in the uptake of smoking of 25%. Among those 18 to 20 years of age, the expected reduction is 15%.<sup>4</sup>

**Variation by demographic variables:** Smoking rates vary substantially by population groups in Minnesota. For example, in 2014 the overall adult smoking rate was about 14%,<sup>1</sup> but within the urban American Indian population the smoking rate was 59%.<sup>8</sup> There is a lack of literature on how smoking initiation would be affected in population groups with higher smoking rates if the sale age were increased. Thus, the estimate here is not adjusted by gender or other demographic variables (eg, race/ethnicity, income).

**Enforcement:** States are required to enact and enforce laws prohibiting the sale or distribution of tobacco products to individuals younger than 18 years of age. A major assumption of Tobacco 21 policy is that the same level of current enforcement and retailer compliance would remain in effect. Although Minnesota has a high rate of retailer compliance with current law,<sup>9</sup> retailer cooperation has been lower

in other places. For example, in New York City, compliance has fallen over time after Tobacco 21 policy was implemented.<sup>10</sup>

**Calculation:** In this analysis, we began with a cohort of Minnesota 15-year-olds in 2015—approximately 72,000. We estimated the smoking initiation rate in two periods: during high school (ages 15 to 17 years) and after high school (ages 18 to 20 years). Next, the reduction in smoking was calculated for each period if the sale age for tobacco were raised to 21 in 2015. We assumed that the smoking uptake in high school and after high school would not change in future years. The difference is reported as the number of young people 15 to 20 years of age who would not have started smoking.

### Results

In 2015, the Minnesota population of those 15-year-olds was approximately 72,000. Of these, an estimated 7,200 will start smoking during their high school years. If the minimum legal sale age in 2015 were 21, an estimated 1,800 would not start smoking in high school.



Of those who finished high school without initiating smoking, 10,368 will begin smoking between ages 18 and 21. Under a Tobacco 21 policy, 1,555 fewer young people would start smoking after high school. Overall, 3,355 fewer young people would start smoking in this cohort of youth if a Tobacco 21 policy were in effect (see Figure). In other words, increasing the sale age to 21 would increase the proportion of nonsmokers in a cohort of 15-year-olds from 76% to 80%.

## Discussion

Increasing the sale age to purchase tobacco products from 18 to 21 would have a positive effect on Minnesota, where tobacco use remains popular among young adults.<sup>1</sup> Given that almost 95% of smokers start smoking by age 21, raising the age of sale to 21 years would prevent the vast majority of young people from becoming addicted to the nicotine in tobacco.

At least 200 localities in 14 states have raised the minimum legal sale age for tobacco products to 21 years.<sup>11</sup> Notably, Hawaii was the first state (2015) followed by California (2016), and New York City (2013) is the largest city to adopt a Tobacco 21 policy. This policy has broad support and is viewed positively by both smokers and nonsmokers. In New York City, 60% of smokers and 69% of nonsmokers have supported the age increase.<sup>12</sup> In a national sample of adults, 70.5% supported the increase.<sup>13</sup> And in an online survey, 77.5% of never smokers and 70% of current smokers either strongly favored or somewhat favored raising the legal purchasing age to 21.<sup>14</sup>

We acknowledge that some young people will begin using tobacco at a later age. The amount is unknown; but even if 5% eventually take up smoking, this would not diminish the overall effect of Tobacco 21 policy. In addition, while we have highlighted how Tobacco 21 would inhibit more than 3,300 youth from initiating smoking, it is important to note the policy could have additional and more indirect benefits. Youth tend to respond more

strongly to smoking bans than to other types of tobacco control<sup>15</sup> in part because a ban is an unambiguous anti-tobacco message that indirectly influences social norms, creating a social environment that discourages health-risk behavior.<sup>16</sup> Put differently, the effects of Tobacco 21 policy would extend into the future as new cohorts of young people do not start using tobacco.

Our analysis considered only cigarette smoking; but a Tobacco 21 policy would apply to all tobacco products. Whether the effects of raising the purchasing age to 21 would be similar across all demographic and racial/ethnic groups is not known. Similar to the IOM, we did not adjust the Minnesota estimate for any variation by demographics other than age. This question should be examined when there is sufficient data on communities that have implemented the policy.

## Conclusion

Raising the minimum sale age for tobacco to 21 would prevent the uptake of smoking among youth and young adults, subsequently reducing smoking prevalence over time. Applying national estimates from the 2015 IOM report to Minnesota, we found that implementing a Tobacco 21 policy could have a marked impact on smoking initiation among Minnesota's young people. Tobacco 21 should be considered an effective strategy for reducing smoking initiation. Preventing smoking among youth remains a primary focus for reducing morbidity and mortality as well as promoting health across the lifespan. **MM**

Raymond Boyle is director of research programs for ClearWay Minnesota. John Kingsbury and Michael Parks are research scientists for the Minnesota Department of Health.

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MINNESOTA COMPREHENSIVE

# TOBACCO CONTROL

# FRAMEWORK 2016-2021

Striving for a Minnesota where all people are free from the harms of tobacco.



# ADVANCING HEALTH EQUITY



## Introduction

Minnesota has a long and rich history of successfully reducing the harm tobacco causes its residents. In 2014, the Minnesota Adult Tobacco Survey found that the rate of adult smoking in the state was 14.4 percent, the lowest rate ever recorded in Minnesota and a significant decrease from the 2010 rate. In addition, all Minnesotans can get free help to quit using tobacco. And all Minnesotans are protected from secondhand smoke in nearly all public places because of the 2007 Freedom to Breathe provisions, amending the Minnesota Clean Indoor Air Act.

**MOVE  
FORWARD**



However, the work is not done. Although the state's overall smoking rates are below national averages, some Minnesota communities and populations still suffer disproportionately from tobacco-related death and disease. The Centers for Disease Control and Prevention (CDC) report that every year, 5,900 Minnesotans die from smoking. Meanwhile, the tobacco industry continues to aggressively target young people as replacement smokers.

## OUR VISION

### Striving for a Minnesota where all people are free from the harms of tobacco

The **Minnesota Comprehensive Tobacco Control Framework 2016-2021** lays out an ambitious path to address tobacco use—still the leading cause of preventable death and disease in Minnesota—and counter the tobacco industry, which remains persistent in marketing and selling its products.

With the vision of striving for a Minnesota where all people are free from the harms of tobacco as its foundation, the Framework delivers to health care providers, policymakers, the public health community and other stakeholders a set of six goals consistent with the priorities established by the CDC and 17 bold steps. The bold steps are deliberately expansive and, in many cases, suggest collaborations and coordination across multiple goal areas.

The Framework was designed for partner organizations to use when formulating their own strategic plans and intentionally does not specify the strategies, objectives and tactics that groups will choose to implement. Each organization's strategic plan is its own responsibility but it is hoped that this Framework will influence and inform the planning decisions of every organization in Minnesota that strives to improve the health of Minnesota's citizens.

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# 10.6%

10.6 percent of high school students smoked cigarettes in the past 30 days.

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## Tobacco Use by Young People\*

Nicotine is addictive and may harm brain development during adolescence.

**No amount of nicotine exposure is safe for youth.**

- The percentage of Minnesota high school smokers who prefer menthol has more than doubled since 2000.
- Nearly half of high school smokers usually smoke menthols.
- Nearly 13 percent of high school students have used or tried e-cigarettes in the past 30 days.

\*2014 Minnesota Youth Tobacco Survey, Minnesota Department of Health, and June 2015 - Health Advisory: Nicotine Risks for Children and Adolescents, Minnesota Department of Health.

# TOBACCO CONTROL HISTORY

From *A History of Tobacco Control* (ANSR, MDH), the Public Health Law Center, and the Minnesota Department of Human Services.

- **1947** *Minnesota enacts its first cigarette tax at 3 cents per pack.*
- **1973** *The Association for Nonsmokers-Minnesota (ANSR) is founded. ANSR is the oldest organization in Minnesota dedicated solely to tobacco control.*
- **1974** *D-Day (Don't Smoke Day) starts in Monticello, Minnesota. This led to the annual nationwide "Great American Smokeout," sponsored by the American Cancer Society.*
- **1975** *Minnesota passes the Minnesota Clean Indoor Air Act, the first legislation of its kind in the nation. The Act describes where smoking is prohibited, outlines the responsibilities of employers and lists exemptions that affect their workplaces and facilities.*
- **1984** *The Minnesota Department of Health (MDH) publishes the nation's first coordinated tobacco control plan.*
- **1991** *Minnesota is one of 17 states to receive funding from the National Cancer Institute for the American Stop Smoking Intervention Study for Cancer Prevention, or ASSIST program.*





# MINNESOTANS WORK FOR CHANGE

- 1994** *The state of Minnesota and Blue Cross and Blue Shield of Minnesota (Blue Cross) sue tobacco companies for violating Minnesota laws against consumer fraud and deceptive advertising and for failing to disclose the addictive qualities of tobacco.*
- 1997** *Minnesota regulates retail tobacco sales and requires compliance checks.*
- 1998** *The state of Minnesota and Blue Cross settle with the tobacco companies. In the settlement, \$6.1 billion is awarded to the state, with a separate award made to Blue Cross, and the tobacco industry is required to turn over more than 35 million pages of documents, many of them internal communications.*
- 1999** *With the settlement, the Minnesota Legislature creates an endowment of about \$20 million a year for MDH to use for youth tobacco-use prevention work. The legislature also establishes an independent nonprofit (which became ClearWay Minnesota<sup>SM</sup>) to oversee 3 percent of the state's settlement.*
- 2000** *Moose Lake, Minnesota, is the first city to adopt a local clean indoor air ordinance.*
- 2001** *Olmsted County becomes the first county in the state to pass a smoke-free ordinance, prohibiting smoking in restaurants.*
- 2003** *The endowment that funds MDH's youth tobacco-use prevention work is eliminated to balance the state budget.*
- 2007** *The Freedom to Breathe provisions pass, amending the Minnesota Clean Indoor Air Act to prohibit smoking in nearly all public indoor spaces.*
- 2013** *Minnesota raises the per-pack cigarette tax by \$1.60 and equalizes taxes on smokeless tobacco products.*
- 2014** *Minnesota prohibits the use of electronic cigarettes indoors in government buildings, public schools and other public spaces. It also requires the use of child-resistant packaging for e-liquids.*
- 2015** *Minneapolis becomes the first city in Minnesota to restrict the sale of flavored tobacco products to adults-only stores.*
- 2016** *Copays for counseling and medications to quit smoking are dropped for Minnesotans insured by Medical Assistance and MinnesotaCare, starting on January 1, 2016.*



# ABOUT THE FRAMEWORK

## HOW THE FRAMEWORK WAS CREATED

The Framework was generated by the state's three primary funders of tobacco control work — the Minnesota Department of Health (MDH), ClearWay Minnesota<sup>SM</sup> and Blue Cross and Blue Shield of Minnesota (Blue Cross) — with the advice and support of many partner organizations, both statewide and local, that have contributed in significant ways to reducing tobacco use in the state. The Framework will be submitted by the Minnesota Department of Health to the CDC.

A Steering Committee composed of senior officials from each of the three funders led the development of the Framework. Representatives from a diverse group of stakeholders, including those whose experience in evidence-based interventions has led to significant progress in tobacco control as well as those whose expertise will fuel future success, were invited to participate on the Advisory Committee.



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# 59%

*\*According to the 2013  
Tribal Tobacco Use Project survey,*

## 59% of American Indians in Minnesota smoke\*

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The Advisory Committee, which met three times between December 2015 and March 2016, held wide-ranging discussions covering the current environment and evidence base as well as emerging issues and promising developments. Understanding that combustible tobacco causes the vast majority of death and disease related to tobacco use, the participants considered both current products and new threats from the tobacco industry, and anticipated agile and versatile answers to such threats. Discussions also reflected the evolving understanding of tobacco addiction as a disease and the changing health care environment as it relates to cessation services.

In addition, participants distinguished between the harmful use of commercial tobacco and the sacred and ceremonial use of traditional tobacco by American Indians. In this document, the word “tobacco” refers to commercial tobacco and includes all types of tobacco products, including electronic nicotine delivery systems.

Members of the Steering Committee participated in the large group discussions and then synthesized the collective wisdom to identify and refine proposed themes and ideas, drawing also from existing best practices and promising practices and strategies.



## Disparities and Progress for American Indian Nations

According to the 2013 Tribal Tobacco Use Project survey, 59 percent of American Indians in Minnesota smoke. This is the highest smoking prevalence in the state and has resulted in epidemic levels of smoking-related disease in this population.

It is necessary to acknowledge “two tobacco ways” in tobacco control efforts in American Indian communities. This means that harmful use of commercial tobacco (manufactured products such as cigarettes) must be distinguished from traditional and ceremonial use based in tribal teachings.

MDH, ClearWay Minnesota<sup>SM</sup> and BlueCross have funded tobacco control efforts that are led by American Indian communities. These community-led efforts combine tribal teachings, evidence-based tobacco control strategies and promising practices to address the “two tobacco ways.”



# A HEALTH EQUITY LENS



## MDH's Triple Aim of Health Equity

The vision of the Minnesota Department of Health is for health equity in Minnesota, where all communities are thriving and all people have what they need to be healthy.

The department works toward its vision with the triple aim of health equity:

- Expand our understanding of what creates health.
- Implement a “health in all policies” approach with health equity as the goal.
- Strengthen the capacity of communities to create their own healthy future.

*Minnesota Department of Health.*

## Health Equity

When every person has the opportunity to realize their health potential — the highest level of health possible for that person — without limits imposed by structural inequities. Health equity means achieving the conditions in which all people have the opportunity to attain their highest possible level of health.

*2014 Advancing Health Equity in Minnesota, Minnesota Department of Health.*

Participants affirmed the importance of an ever-present health equity lens, to elevate and make explicit the importance of continuing to reduce health disparities, as a guiding principle in their work. Tobacco-related health disparities and issues particular to priority populations or those communities disparately impacted by tobacco were noted throughout the discussions.

MDH representatives shared with the group preliminary findings from a six-month statewide community input process (Community Voices) to address the disproportionately higher rates of commercial tobacco use and secondhand smoke exposure among communities most harmed by tobacco.

The Community Voices project included input from more than 350 Minnesotans about the harms of tobacco in the community, interventions to decrease tobacco use and exposure, and strategies to address tobacco-related health inequities. This process included group sessions, individual interviews and an on-line survey.

The Advisory Committee further acknowledged that reducing tobacco use and its impact cannot be accomplished without addressing multiple factors that contribute to tobacco addiction. The correlations between high tobacco use and mental illness, chemical dependency and poverty are particularly clear and striking. External factors, including educational and job opportunities, racism, cultural norms and other social determinants of health must be recognized when designing and implementing tobacco prevention and control strategies. Tackling these complex challenges requires systemic and structural solutions.

## A COMPREHENSIVE TOBACCO CONTROL PROGRAM

According to the CDC, a comprehensive, statewide tobacco control program is a coordinated effort to establish smoke-free policies and social norms to promote and assist tobacco users to quit, and to prevent the initiation of tobacco use. A comprehensive approach combines educational, clinical, regulatory, economic and social strategies. Programs that are comprehensive, sustained and accountable have reduced smoking rates, as well as tobacco-related diseases and deaths.

The CDC's **Best Practices for Comprehensive Tobacco Control Programs — 2014** is a guide to help states plan and establish such programs. Based on the scientific literature and the experiences of state and local programs, the most effective population-based approaches fall within the following components:

- State and Community Interventions
- Mass-Reach Health Communication Interventions
- Cessation Interventions
- Surveillance and Evaluation
- Infrastructure, Administration, and Management

**BEST  
PRACTICES**



An appropriate media presence, cutting-edge research and a clear health equity focus are integral to success in all of the five components. In addition, the CDC guidelines note that these components are most effective and produce synergistic results when they are used together.

## PLANNING FOR SUSTAINABILITY

Minnesota has reaped the benefits of a robust statewide tobacco control infrastructure. However, challenges — some known, others not yet discerned — loom.



This Framework begins the vital statewide conversation about strengthening Minnesota’s effective tobacco control infrastructure given the realities of current state funding and the approaching end of ClearWay Minnesota<sup>SM</sup> in 2023, as required by the settlement agreement.

ClearWay Minnesota<sup>SM</sup> has been a unique and significant participant in Minnesota’s tobacco control effort since its inception in 1998. After the state of Minnesota settled a four-year lawsuit with the tobacco industry for \$6.1 billion, it created the private, nonprofit corporation to administer 3 percent (\$202 million) of the funds for a 25-year period.

Throughout its tenure, ClearWay Minnesota<sup>SM</sup> has worked to eliminate the harm tobacco causes the people of Minnesota. In 2015, ClearWay Minnesota<sup>SM</sup> spent approximately \$15 million to help Minnesotans quit smoking, fund tobacco-related research, and on policy, community development and communications activities around the state.

Blue Cross and Blue Shield of Minnesota was a partner of the state’s in the lawsuit and received \$469 million in settlement funds in 2006. Funded with proceeds from the lawsuit, the Center for Prevention at Blue Cross and Blue Shield of Minnesota delivers on Blue Cross’ long-term commitment to improve the health of all Minnesotans by tackling the leading root causes of preventable disease: tobacco use, lack of physical activity and unhealthy eating.

# 5.5X

\*According to the latest Federal Trade Commission report on tobacco marketing

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The tobacco industry spends \$135 million annually promoting its products, that’s 5.5 times the funds Minnesota currently spends on tobacco control.

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The Center for Prevention collaborates with organizations statewide to increase health equity, transform communities and create a healthier state. To achieve this, it invests in community funding programs, public awareness campaigns and evaluation. It invests approximately \$3.2 million in tobacco control each year, and actively advocates for policies that support prevention at both a state and local level, including recent efforts to increase the tobacco tax and incorporate electronic cigarettes into existing Clean Indoor Air laws.

The importance of sustained, adequate funding for tobacco control is eloquently stated in the CDC's *Best Practices for Comprehensive Tobacco Control Programs — 2014*:

Research shows that the more states spend on comprehensive tobacco control programs, the greater the reductions in smoking. The longer states invest in such programs, the greater and quicker the impact.

The CDC's *Best Practices for Comprehensive Tobacco Control Programs — 2014* recommends that Minnesota spend \$52.9 million a year in order to have an effective, comprehensive tobacco control program. Despite the powerful case for funding, the three funders in Minnesota currently spend \$24.3 million a year on tobacco control.

That figure stands in stark and worrisome contrast to the \$135 million the tobacco industry spends annually in Minnesota to promote its products (according to the latest Federal Trade Commission report on tobacco marketing) and the billions Minnesota spends to address the health problems caused by tobacco use.

Tobacco use causes expensive diseases, such as cancer, heart disease and stroke. And, the 2014 Surgeon General's Report on smoking and health, *The Health Consequences of Smoking: 50 Years of Progress*, notes that even though smokers today smoke fewer cigarettes, they have a greater risk of developing lung cancer than did smokers in 1964.

**The Minnesota Department of Health reports that each year, tobacco use costs Minnesota more than \$2.5 billion in excess health care expenses.**

Many of Minnesota's achievements in tobacco control have been driven by policy changes that have made it easier for people to live tobacco-free lives. Policy interventions — such as laws, ordinances, regulations and rules — create long-lasting changes because fewer children start smoking and more smokers quit. For example, the 2014 Minnesota Adult Tobacco Survey found that a 2013 increase in the tobacco tax reduced the state's smoking rate.

Policy changes can also refer to enhanced enforcement or implementation of existing policies. Policy changes also drive changes within systems and organizations. One example is the increased availability of cessation services as a result of the Affordable Care Act.



# \$2.5 BILLION

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The Minnesota Department of Health reports that each year, tobacco use costs Minnesota more than \$2.5 billion in excess health care expenses.

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Throughout Minnesota's tobacco control history, those policy changes often began with concerned individuals who came together in small groups. This movement grew to form coalitions that spurred action to protect people, neighborhoods and communities from secondhand smoke and tobacco addiction. The tobacco control movement continues today with a majority of Minnesotans supporting even more action to reduce the harm tobacco causes the people of Minnesota. Many of the organizations and people involved in these efforts, as well as newly interested organizations, are represented on the Advisory Committee to this Framework.

As important as dedicated individuals and grassroots organizations are, significant gains in tobacco control also require a well-funded state infrastructure with professional expertise to lead coordinated and sophisticated efforts to counter the clever, highly motivated tobacco industry.

However, simply having a state infrastructure will not be sufficient. Minnesota will have to make wise and bold decisions about how to use the assets of its tobacco control infrastructure in proven — and innovative — ways to benefit all of its people.

Those who developed this Framework believe it is the first step to responding to that challenge.

# OUR GOALS



The Minnesota Comprehensive Tobacco Control Framework outlines six ambitious goals that align with and build on the goals established by the Centers for Disease Control and Prevention:

- **PREVENT** initiation of tobacco use among youth and young adults.
- **ELIMINATE** exposure to secondhand smoke.
- **PROMOTE** tobacco use cessation among adults and youth.
- **PARTNER** with those communities most affected by tobacco-related inequities to identify and eliminate those disparities.
- **SUSTAIN** a robust state tobacco control infrastructure that fosters effective collaboration throughout the state.
- **ENGAGE** the strengths of individuals and communities throughout Minnesota to reduce tobacco use and improve health.

# BOLD STEPS



Making significant and lasting improvements in the health of Minnesotans will require bold leadership and adequate infrastructure.

- **ESTABLISH SUSTAINED STATE TOBACCO CONTROL FUNDING** that meets or exceeds the CDC's recommended levels through cigarette and tobacco taxes, tobacco settlement dollars, other means or a combination of dedicated sources.
- **SUPPORT AND SUSTAIN NEW AND EXISTING COMMUNITY LEADERSHIP** for tobacco control work, particularly in communities with high rates of tobacco use and challenged by poverty.

## LASTING CHANGE





Legislation and policies effectively create tobacco-free environments that promote healthy living. Lasting change results from shifts in the social environment across communities.

- **INCREASE THE PRICE OF ALL TOBACCO PRODUCTS** through taxation policies and restrictions on discounts.
- **RESTRICT SALES** of menthol-flavored tobacco products to adults-only tobacco stores.
- **RESTRICT SALES** of flavored tobacco products to adults-only tobacco stores.
- **MAKE 21 THE MINIMUM** legal age to purchase tobacco products.
- **RESTRICT SALES** of higher nicotine cigarettes.
- **EXTEND THE PROTECTIONS** of the Minnesota Clean Indoor Air Act by including electronic cigarettes in restricted products and expanding the locations covered to include cars with children, lodging, treatment facilities and other places used by the public.
- **ADOPT SMOKE-FREE HOUSING** policies in all multi-unit housing.

TOWARD A  
HEALTHIER  
TOMORROW



# MORE BOLD STEPS



Knowledge informs positive change and reinforces accountability when addressing the current landscape as well as coming challenges.

- **COLLECT AND ANALYZE** accurate tobacco-related data by race, ethnicity, language preference, sexual orientation, gender identity and other factors that can inform increasing the effectiveness of prevention strategies and cessation treatments for all Minnesotans.
- **IDENTIFY THE POPULATIONS** that are most disparately impacted by the harms of tobacco, and engage the wisdom, strengths and expertise of those communities when investing in culturally specific approaches to prevention and cessation.
- **ACKNOWLEDGE AND ADDRESS** the linkage between tobacco use and the social determinants of health, and integrate this into tobacco control work.
- **ACKNOWLEDGE AND RESPECT** tribal practices and tribal sovereignty with support for community-driven initiatives such as policies and programs to reduce youth and adult use of commercial tobacco and secondhand smoke exposure among American Indians living on the reservation and in urban areas.

Helping individuals break free from tobacco addiction requires multiple levels of intervention.

- **CREATE NEW STRATEGIES** to integrate treatment and ensure comprehensive benefits across government-funded health care programs, insurance plans and health care systems to improve access to cessation services, with a focus on those most disparately impacted by tobacco's harms.
- **EXPAND THE TYPE OF HEALTH WORKERS WHO PROVIDE TOBACCO DEPENDENCE TREATMENT.** Enhance the training of these providers to enable them to offer effective, culturally responsive cessation and prevention support.



- **UPDATE THE REIMBURSEMENT SYSTEM** by expanding the types of health workers who can receive reimbursement for delivering tobacco dependence treatment, increasing the amount of reimbursement itself, and ensuring all best-practices services (counseling and medications) are covered as health insurance benefits.
- **DEVELOP AND IMPLEMENT STRATEGIES** to integrate tobacco dependence treatment within mental illness and substance use disorder treatment.

# TOGETHER WE CAN CHANGE OUR FUTURE





## MEMBERS OF THE STEERING COMMITTEE

### **Laura Oliven, MPP**

Tobacco Control Manager  
Minnesota Department of Health

### **Andrea Mowery**

Vice President  
ClearWay Minnesota<sup>SM</sup>

### **Janelle Waldock, MPA**

Vice President  
Community Health & Health Equity  
Blue Cross and Blue Shield of Minnesota

## MEMBERS OF THE ADVISORY COMMITTEE

Ellie Beaver, Minnesota Government Relations Director, American Cancer Society Cancer Action Network

Rachel Callanan, Regional Vice President of Advocacy, American Heart Association

Eric Dick, Manager, State Legislative Affairs, Minnesota Medical Association

Kathy Gregersen, Executive Director, Mental Health Resources

Erin Huppert, Health Policy Specialist, Allina Health

Jin Johnson, Health Policy Specialist, Minnesota Association of Community Health Centers, and Co-Chair,  
Asian Americans and Pacific Islanders Health Collaborative

Dr. Anne Joseph, Applied Clinical Research Program Director, University of Minnesota

Taqee Khaled, Manager, Center for Prevention, Blue Cross and Blue Shield of Minnesota

Warren Larson, Past Chair, Minnesota Cancer Alliance

Maggie Mahoney, Executive Director, Tobacco Control Legal Consortium at the Public Health Law Center

Pat McKone, Regional Senior Director, American Lung Association of Upper Midwest

Julie Myhre, Director, Office of Statewide Health Improvement Initiatives, Minnesota Department of Health

Eugene Nichols, Tri-Chair, African American Leadership Forum Health and Wellness Group, and Chair, Open Cities Health  
Clinic Board of Directors

José R. Picón, Manager, Chemical Health Services, and Psychotherapist, Comunidades Latina Unidas en Servicio

Kris Rhodes, Executive Director, American Indian Cancer Foundation

Pete Rode, Research Scientist and Health Equity Data Advisor, Minnesota Department of Health

Dr. Barbara Schillo, Vice President, ClearWay Minnesota<sup>SM</sup>

Lorna Schmidt, Executive Director, Local Public Health Association of Minnesota

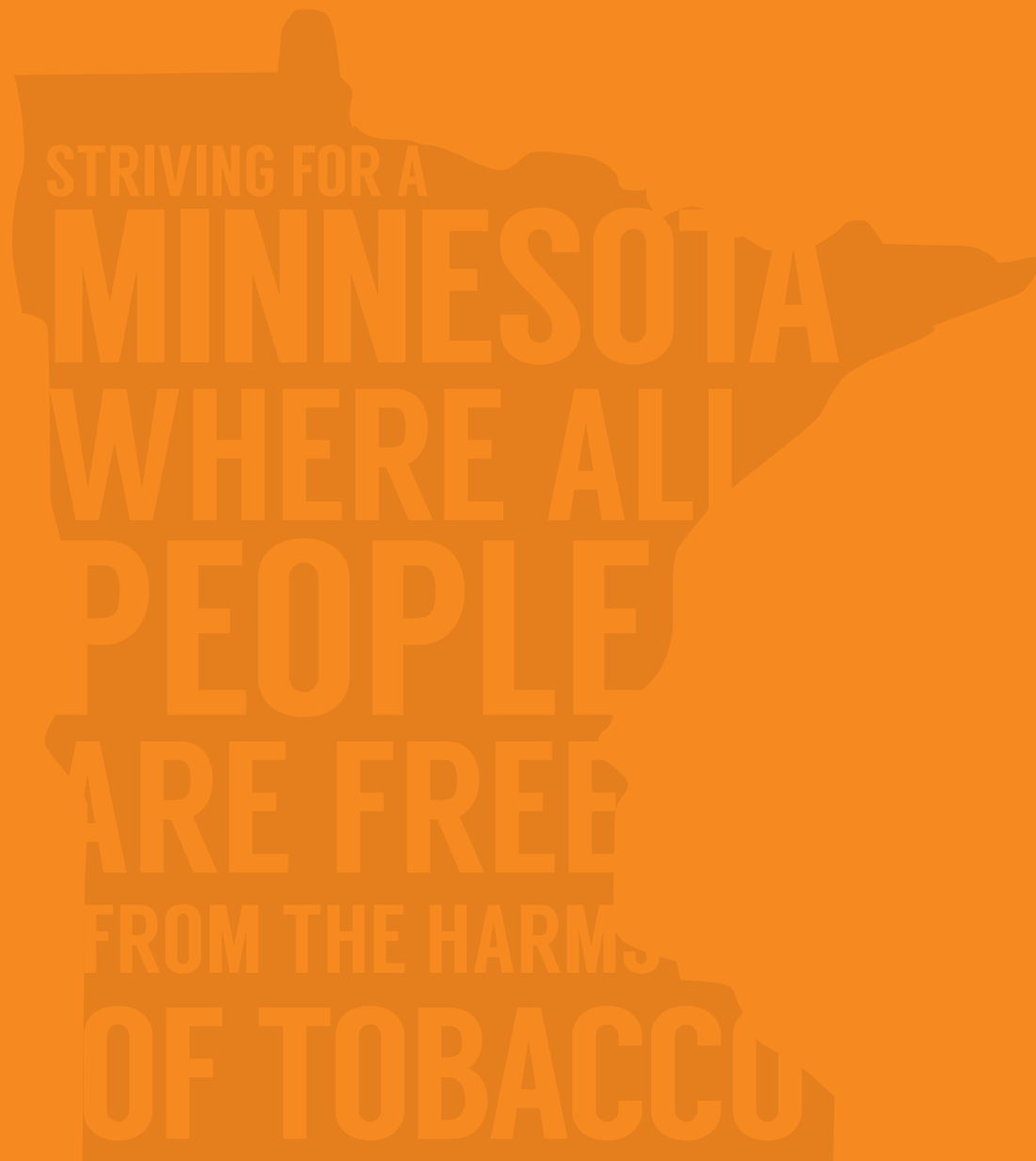
Joel Spoonheim, Director of Health Promotion, HealthPartners

Jerry Storck, Supervisor, Adult Mental Health Division, Minnesota Department of Human Services

Joann Usher, Executive Director, Rainbow Health Initiative

Jeanne Weigum, President, Association for Nonsmokers-Minnesota

Stella Whitney-West, Chief Executive Officer, NorthPoint Health and Wellness Center, Inc.



Source: Minnesota Department of Health

<http://www.health.state.mn.us/tobacco21>

## Tobacco 21: Health Impacts of Raising the Minimum Tobacco Sale Age

Research shows that raising the legal sale age from 18 to 21, known as “Tobacco 21,” would greatly reduce youth tobacco use and prevent kids from starting to smoke, according to a 2015 Institute of Medicine report. Notably, the report estimated there would be a 25 percent reduction in smoking initiation among 15-to-17-year-olds if the age to purchase tobacco were raised to 21.

Nearly all tobacco users start before age 21. According to a [2017 MDH Health Advisory on nicotine](#), teens are especially susceptible to nicotine addiction and the harmful effects of nicotine on the developing brain. Raising the minimum tobacco sale age to 21 would limit youth access to tobacco until age 21, when the portion of the brain responsible for rational decision-making is more fully developed.

### Research shows raising the tobacco sale age would keep Minnesota kids from starting.

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In Minnesota, raising the legal sale age to 21 would have a one-time effect of preventing over 3,300 young Minnesotans from starting to smoke, according to a January 2017 Minnesota Medicine article. Following this model, Tobacco 21 would prevent an estimated 30,000 Minnesota youth from starting to smoke over a 15-year period.

**Read more:** [Raising the Minimum Legal Sale Age for Tobacco to 21: The Estimated Effect for Minnesota \(PDF\)](#)

Increasing the age gap between kids and those who can legally buy tobacco would help keep tobacco out of the high school environment. Results from the 2016 Minnesota Student Survey revealed that one in five students still use tobacco products of some

kind, and according to the Centers for Disease Control and Prevention, 102,100 Minnesota youth are projected to die from smoking.

## Communities are taking action to protect youth.

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Long term, Tobacco 21 has the potential to significantly reduce smoking, and the [Minnesota Comprehensive Tobacco Control Framework: 2016-2021 \(PDF\)](#) identifies Tobacco 21 as a step for reducing youth tobacco use.

Nationally, more than 260 communities in 18 states have adopted a Tobacco 21 policy. The states of California, Hawaii, Maine, New Jersey, and Oregon have also raised their minimum tobacco sale age to 21. Edina was the first Minnesota local jurisdiction to raise its tobacco sale age to 21, effective July 1, 2017. St. Louis Park will be the second with its ordinance going into effect on October 1, 2017.

**Learn more about the nationwide Tobacco 21 movement at [tobacco21.org](http://tobacco21.org).**

## Learn more

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- [Raising the Minimum Legal Sale Age for Tobacco to 21: The Estimated Effect for Minnesota \(PDF\)](#)
- [Report Brief: Health Implications of Raising the Minimum Age for Purchasing Tobacco Products \(PDF\)](#) – Institute of Medicine
- [Increasing the Sale Age for Tobacco Products to 21](#) – Campaign for Tobacco-Free Kids
- [Three out of 4 American adults favor making 21 the minimum age of sale for tobacco products](#) – U.S. Centers for Disease Control and Prevention
- [Tobacco 21](#) - Minnesotans for a Smoke-Free Generation
- [Tobacco 21: Tips and Tools \(PDF\)](#) – Public Health Law Center
- [Violations and Penalties \(PDF\)](#) – Public Health Law Center

This information is also available as a PDF: [Tobacco 21: Health Impacts of Raising the Minimum Tobacco Sale Age \(PDF\)](#)

- 
- [Share This](#)

### **Need help quitting?**

Visit [Quit Tobacco](#) for free resources to help you quit.



## Contact Us

[tobacco@state.mn.us](mailto:tobacco@state.mn.us)

651-201-3535 Phone

866-901-8316 Toll-free

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*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	February 7, 2018
<b>Agenda Item</b>	Item #6
<b>Attachment</b>	Draft Application
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Bush Foundation Grant
<b>Description</b>	Attached is a draft application for grant funds for the Bush Foundation Grant. The City will submit a grant application for the Community Innovation Grant. You can find more information at:  <a href="https://www.bushfoundation.org/grants/community-innovation-grants">https://www.bushfoundation.org/grants/community-innovation-grants</a>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>· Draft Grant Application</li> </ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed.

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Title (40 words)

Tim

Katie

**2. In 3,000 characters or less (approximately 500 words), provide a brief introduction to:**

- Your organization and any people or organizations working closely with you on this project. As the applicant organization, describe why you are well positioned to lead this work. If you're applying as a fiscal sponsor, please briefly describe both your organization and the group you're sponsoring.**
- Your community. What do we need to understand about your community or context to better understand the work you are proposing?**

The city of Falcon Heights, Minnesota is located 10 minutes from downtown Minneapolis and Saint Paul and is a community of only 5,400 residents. However, the city serves as a major thoroughfare as over 50,000 vehicles pass through every day including 10's of thousands of visitors who attend the University of Minnesota's "St. Paul" campus and over 2 million annual visitors who attend events at the Minnesota State Fairgrounds. Additional unique considerations include the fact that the State Fairgrounds and University of Minnesota are located within the city; therefore, the city receives no property tax from 70% of the total land within the city's borders. This creates challenges that force the city to find creative ways to collaborate with community partners to promote community values important to the city's residents and visitors alike. Ultimately, the city serves a significant population beyond its own residents.

On July 6, 2016 the city was changed forever following the death of Philando Castile. Immediately following, the city, its residents, and the surrounding community have worked tirelessly to promote equity and inclusion for residents and visitors of Falcon Heights. The Council was very thoughtful in their decision making process to create a task force on policing and inclusion a few months after Philando Castile was killed by a police officer. His death, which garnered national and international media attention, galvanized concern about police-community relations, racialized patterns of policing, and exclusion in the community, which led to the creation of the Task Force. The City established a Task Force with 11 diverse members that included residents, businesses owners or their designees with different experiences and backgrounds. This collaborative effort was intended to build the city's capacity by increasing the collective understanding of the aforementioned concerns affecting the community. Beginning in December 2016, they met for 13 regular task force meetings. During the process, the city expanded its knowledge base and built capacity with various community members. The City had to reach out to numerous agencies and organizations willing to help on a voluntary basis, some of which were subject matter

experts that informed the Task Force in four priority areas (policing, police-community relationships, citizen oversight boards, and joint powers authorities). Community members who collaborated in the process included (but are not limited to) the American Arbitration Association, Center for Integrative Leadership, MN State Office for Collaboration and Dispute Resolution, Mitchell Hamline School of Law, and the University of Minnesota: Dispute Resolution Institute. The City saved over \$100,000 due to volunteers and people's willingness to help the community heal.

**3. What is the problem that you're trying to solve with the work proposed in this application? How did you decide to focus on this problem? Who informed, or was involved in, identifying the problem that you are working on solving?**

Maximum of 900 characters (approximately 150 words)

*Maybe address Community Values Statement...?*

Falcon Heights established a statement of community values that evolved from community conversations led by the Task Force involving residents, business designees, and guests of the city. # of participants were involved in these community conversations. These conversations helped identify what the standard should be for Falcon Heights' *Statement of Community Values* and where Falcon Heights is currently falling short to meet that standard. Through these dialogues, common themes emerged of a need to become a more inclusive, welcoming, and transparent community that needs rebuild trust.

These insights will guide ongoing efforts, and working towards these goals will take continuous and sustainable actionable effort. The problems that the city faces have no one, set solution. The death of Philando Castile propelled the City of Falcon Heights into action, but the residents have communicated their desire for change. The desire to change is the first step towards creating change.

**4. Why is it important to address this problem now? How is the identified problem typically addressed in your field or community? Describe the current "status quo" approach and why something different is needed.**

Maximum of 900 characters (approximately 150 words)

*Refer back to unique constraints on the city, creating a roadmap going forward...?*

Falcon Heights has been propelled forward into action since the July 6<sup>th</sup> event. Momentum within the city has continued to build since this day; therefore, it is important to address these issues since the community desires to see change and is involved in the process. The city has sought resources and has conversed with cities that have experienced similar issues. Unfortunately, there isn't a road map or an easy solution. There are programs, such as GARE, that assist with working through preventative measures. As a small city with limited resources by way of staff and finances, a high-cost membership is not feasible or sustainable.

Our limited resources prompted us to do what we could up until now. The city partnered with subject matter experts and has developed a guide for moving forward. There is some leeway within the guide to allow additional input and the ability to select focuses based on

available resources. Inclusion and equity work is ongoing and goes beyond the work of the city alone.

**As you complete the questions in this tab, you may want to check out [our Community Innovation Process diagram](#) for inspiration.**

**5. In 1,800 characters or less (approximately 300 words),**

- Provide a short overview of the problem-solving process you will use to pursue a breakthrough. (Two to three sentences.)**
- Provide a numbered list of key activities you are proposing during the grant term.**

In an ongoing attempt to increase collective understanding and build the appropriate capacity, the Falcon Heights Task Force on Policing and Inclusion created a number of desired strategies to pursue results. Recommendations include Culture and Values, improving Police-Community Relationships, increased Training and Capacity, a better understanding of Data and Transparency, Priorities for Policing and Activity, and ultimately creating and maintaining Ownership of the ongoing process.

1. Culture and Values – Better understand and promote the following:
  - a. Anti-discrimination Culture
  - b. Respect for Life
  - c. Community Values
  - d. Anti-Profilng
2. Police-Community Relationships – Better understand and promote the following:
  - a. Mutual Safety through Mutual Trust
  - b. Ownership
  - c. Community Engagement
  - d. Community-Police Work Groups
3. Training and Capacity – Better understand and promote the following:
  - a. Mental Health for Mutual Safety and Well-Being
  - b. Training
  - c. Hiring and Workforce
4. Data and Transparency – Better understand and promote the following:
  - a. Data Collection
  - b. Public Feedback
  - c. Serious Incident
5. Priorities for Policing Activity – Better understand and promote the following:
  - a. Respect for all
  - b. Emergency response
  - c. Community Policing
  - d. Cultural Competence and Community Engagement
  - e. Informative Policing

- f. Traffic policing
  - g. Property Crimes
6. Ownership – Create and maintain ownership of the following items:
- a. Articulate Community Values
  - b. Emphasize Mutual Safety and Mutual Trust
  - c. Affirm importance of Training
  - d. Ensure mechanisms for data collection
  - e. Provide clear and compelling consequences for non-compliance

Each of the aforementioned items and subdivisions have varying levels of planned details. There are a number of specific trainings listed in the proposed budget for elected officials, staff, and residents. However, there are a variety of items to better understand which are estimated by staff hours in the attached budget.

**6. Describe the work that brought you to this point and how it has informed the activities you've proposed for this grant.**

Maximum of 900 characters (approximately 150 words)

*Refer to the flow chart, reference FHTF...?*

The Falcon Heights Task Force on Policing and Inclusion was created on **xxxx, 2016**. **Over the course of six months**, upwards of **xxxx** volunteer hours have been invested. The Task Force's action and efforts resulted in a final report of recommendations on both inclusion and policing to the Council.

The recommendations will inform the city's actions and activities that we are proposing for this grant. The Falcon Heights Community Engagement Commission determined priorities that could most immediately be implemented.

**Education and Training**

- Explore what trainings the Science Museum has to offer and schedule a training that's open to all
- Host a city-offered implicit bias training
- Host workshops on resources for Falcon Heights residents (i.e. dialogue about legal rights of renters vs. landlords). Bring these workshops to the community instead of hosting only at City Hall.

**Resources**

- Consider what resources are needed to enhance the website and make updates.
- Enhance the new resident and block party packets with updated community resources.
- Post the community values clearly on the homepage of the website, and include them in the new resident/block party packets.



**Events: increase participation, provide more resources, and have more community groups present**

Host up to one Community Conversation per quarter.

**7. WHO will you engage in problem-solving? We are looking for processes that are inclusive: meaningfully engaging key stakeholders - thoughtfully identifying those needed to create the intended change and, whenever possible, including those directly affected by the problem.**

Maximum of 900 characters (approximately 150 words)

*Reference to budget...?*

Potential partners are other cities with similar challenges, the U of M Center for Urban and Regional Affairs and arts organizations with content speaking to the issue of cultural competency and inclusiveness.

During the first months, the Community Coordinator of Inclusion and Policing will meet with the existing partnerships and organizations to keep this network linked, vital and contributing to infusing the Statement of Values into the life of the community. This list currently includes the University of Minnesota, Science Museum of Minnesota, The Center for Urban and Regional Affairs, The Art of Hosting, The Center for Imaginative Leadership, Living Room Conversations, area schools, area churches, area businesses and a long list of small area organizations, some founded in response to the July 6, 2016 deadly traffic stop of Philando Castile.

Potential new partnerships include the Minnesota Historical Society, The Historyapolis Project at Augsburg College, the Ramsey County 'Book of the Year' community reading club or other book clubs, training programs such as Hope in the Cities, Sustained Dialog, Alaska Native Dialogue on Racial Equity Toolkit, Training for Change, Race Forward—Racial Equity Impact Statement tool, local artists hosted at local businesses such as the Underground Music Café, Intermedia Arts (TC-based), or Laundromat Arts (NY-based).

Ongoing community conversations will be organized and hosted at sites around the City of Falcon Heights. Local businesses are envisioned to be hosts of some of these meetings, with plans to hold four to eight meetings on topics expanding knowledge of diverse cultures and local Falcon Heights history.

**8. HOW will you work with other partners through the problem-solving process? Describe the group that has come together to work on this project, the various roles of the people and organizations that are involved and how you make decisions together. We are looking for processes that are collaborative: a true joint effort, with partners willing to share ownership and decision-making as they pursue an innovation together.**

Maximum of 900 characters (approximately 150 words)

*Stakeholders, those involved in the process to this point, those going forward...?*

In early 2017, the City established a Task Force with 11 diverse members that included residents, businesses owners or their designees with different experiences and backgrounds. They met for 13

regular task force meetings as the city expanded its knowledge base and built capacity with various community members. This included numerous agencies and organizations willing to help on a volunteer basis, some of which were subject matter experts that informed the Task Force in various areas. Participants included: American Arbitration Association, Center for Integrative Leadership, MN State Office for Collaboration and Dispute Resolution, Mitchell Hamline School of Law, and the University of Minnesota: Dispute Resolution Institute. Additionally, our Co-Facilitators were Kathy Quick - Associate Professor at the Humphrey School of Public Affairs with expertise in civic engagement and public participation, collaborative governance and policy, and program implementation, and Ken Morris who is an Adjunct Professor for Mitchell Hamline School of Law.

The City saved over \$100,000 due to volunteers and people's willingness to help the community heal. However, in order for the city to carry this work forward, it will require significant investment to be able to facilitate this expansive, collaborative effort.

TOO LONG...

**9. WHAT community assets and resources will you build on as you pursue a solution to your community problem? We are looking for processes that are resourceful: using existing resources and assets creatively to make the most of what a community already has.**

Maximum of 900 characters (approximately 150 words)

*CEC, P&R, Council... Additional Stakeholders...?* **NEEDS A LOT OF RE-WORKING**

While the city is limited to 5,400 residents, the community remains very participatory. Residents and visitors to the community alike contribute to community efforts in a variety of ways. Existing resources include the elected officials who will provide direction on priorities, but also various commissions and their volunteer members.

The Community Engagement Commission (C.E.C.) has initially been charged with better understanding the desires of the Falcon Heights Task Force and creating priorities for the city to pursue. As the C.E.C. and the City Council continue dialogue, desired outcomes are being created. While the C.E.C. has initially taken on a bulk of this work, other existing capacities, including the Parks and Recreation Commission have explored ways to better promote and understand this work going forward. Whether through community events or trainings for staff, residents and the elected officials, commissioners have provided numerous opportunities they are interested in pursuing as funding becomes available.

**We know that innovation takes time. In the questions below, we want to learn about both the progress you'll make during this grant term and the community innovation you ultimately imagine.**

**Progress during grant term:**

**10. Provide a numbered list of key outcomes you anticipate achieving by the end of the grant term. What will increase, decrease, improve, etc. because of the work you've proposed? This is the place to be practical about what you hope to accomplish during this grant period.**

Maximum of 1,800 characters (approximately 300 words)

*Itemize 2 year process. Refer to CEC, FHTF docs, create baseline, suggest measures to understand success/failure.*

It is anticipated a sustained, long-term effort will be needed to establish sufficient small changes to reach a tipping point to enhance and transform a new culture of inclusiveness and welcoming of diversity will become more evident. Out of this effort, the vision is for everyone in Falcon Heights to have the mindset and tools to create inclusiveness in the City of Falcon Heights, for long-term residents and recent transplants, for guests of residents and for all who visit the City.

- Collaboration/Partnerships- more resources- strengthening current partnerships
- More conversations about difficult and uncomfortable topics
- Accessibility to trainings
- More knowledge, awareness, and skills to have difficult conversations created through trainings and providing information/resources
- Learning opportunities
- Improved relationships and trust
- Increased communications to increase transparency

We will utilize communication outlets to inform, educate, and engage. We can utilize current tools such as, the bi-annual newsletter, social media platforms, the city website, and city-wide mailers.

We will utilize surveys and community conversations as a baseline measurement for involvement/engagement in the topics.

***Your long-term vision:***

**11. This is the place to dream. You're building towards a community innovation - a breakthrough in addressing a community need that is more effective, equitable or sustainable than existing approaches. What is the breakthrough you imagine one day? What will be different because of it? How will your community be changed?**

Maximum of 1,800 characters (approximately 300 words)

*We will create a blueprint for other cities, incredibly valuable. Learn from our success and mistakes...?*

I have notes on this... but have not completed a statement.

- List various trainings
- List expanding/new opportunities
- Talk about desired outcomes, these statements come from FHTF statement, training materials, etc...

**12. Is a primary purpose of the proposed work to actively reduce structural and/or systemic gaps in access, outcomes, opportunities or treatment based on a person's race/ethnicity or economic standing? At least 50% of Community**

**Innovation grants will be for projects that address racial and/or economic disparities.**

Absolutely. Although our city is just one piece of the puzzle, our actions contribute to the whole. We want to engage with residents and have more open conversations about systemic discrimination, whether race, economic status... A key purpose of these short and long-term goals is to work on inclusion which directly relates to opportunities and treatment based on a person's race/ethnicity or economic standing. These community values are ingrained in the foundation of the recommendations that the Council has adopted, and they guide the goals that city seeks to achieve.

**13. If yes, how? Optional. The Bush Foundation will take your entire application into consideration when determining whether your work fits the above commitment. If your work does not actively work to address racial and/or economic disparities, you do not need to provide an answer to this question. Maximum of 900 characters (approximately 150 words)**

*As understanding is created, through collaboration we will create desired outcomes.*

We work to look to not only create more awareness but also more understanding through listening, receiving feedback, and collaborating with many different groups. We realize that not having all the answers should not stop you from starting somewhere. The Community Conversations, trainings, and events will be important pieces of proposed work to gain insight, receive feedback, and to engage stakeholders. This is an ongoing effort that cannot be resolved by applying a band aid to the large wound of systemic gaps and systemic discrimination.

Overall, our purpose is to work on increasing inclusion, equity, transparency, accountability, trust, awareness, building leadership, encouraging courageous action, and increasing safety. This is no small feat.

**\*\*Attachments\*\***

### **Project Budget (required)**

An application without a project budget is not considered complete and will not be reviewed or considered. A sample budget is available to view on our website.

### **Fiscal Sponsorship Agreement (if applicable)**

If a fiscal sponsorship relationship is part of this application, the signed fiscal sponsorship agreement must be included. An application without the signed agreement is not considered complete and will not be reviewed or considered.